

***United States Court of Appeals
for the Second Circuit***



**INTERVENOR'S
BRIEF**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GREENE COUNTY PLANNING BOARD AND TOWN
OF GREENVILLE,

Petitioners,

- against -

FEDERAL POWER COMMISSION,

Respondent,

POWER AUTHORITY OF THE STATE OF NEW
YORK,

Intervenors,

UNITED BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 1249,

Intervenors.

76-4151
76-4153

No. 76-4151

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BRIEF OF INTERVENOR, POWER AUTHORITY OF
THE STATE OF NEW YORK ON PETITION TO REVIEW
ORDERS OF THE FEDERAL POWER COMMISSION

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ISSUES PRESENTED FOR REVIEW

1. Jurisdiction of the Commission

Petitioners argue that the Gilboa-Leeds Transmission Line is not a primary line within the meaning of Section 3(11) of the Federal Power Act. If that were so the Federal Power Commission would not have jurisdiction. Intervenor, Power Authority has no doubt that the line is a primary line.

2. Status of Petitioners

Both Greene County and the Town of Greenville determined not to continue Court litigation after the Commission rendered its decision approving design and location of the Leeds Line. However the County without open and formal action and the Town with open and formal action decided to allow an association of private landowners to seek this Court's review of the Commission's action at the sole expense of the association and its members and without petitioners assuming any responsibility whatever, financial or otherwise. Since neither the association nor its members were parties to the Commission proceeding and in the light of the refusal of the County and Town to assume responsibility the Authority contends that this review proceeding does not lie and should be dismissed.

3. Need for the Line

Petitioners argue that the Commission licensed the line as part of the interconnected grid and not for the purpose of transmitting power from

the Blenheim-Gilboa Power Plant to Leeds and that the line is not needed for either purpose. The Authority contends that the line is necessary to transmit Blenheim-Gilboa power to the interconnected primary transmission system at Leeds and that it will be useful for other purposes.

4. Commission Determination as to Route

Petitioners do not appear specifically to challenge the Commission's choice of a route for the line but maintain that the Commission didn't go about its selection correctly and lacked a basis for choosing any location. The Authority wholly disagrees.

5. Compliance with NEPA

Petitioners raise many procedural issues including one that the draft and final environmental statements in the case were defective and that the license should be set aside and new draft and final environmental statements prepared covering the environmental impact not only of the power facilities involved in this case but also all other power facilities whether in being, planned or merely conjectural over a wide territory. The Authority disagrees.

6. Erroneous and Misleading Statements

Petitioners have made numerous erroneous and misleading statements concerning the conduct of the Commission, its Staff and the Administrative Law Judge in the proceedings below. These attacks are without support in the Record. Time permits the Authority to comment on only a few of the material misrepresentations advanced by petitioners.

7. Attack on the Administrative Law Judge

Petitioners allege that the Administrative Law Judge who presided at the hearings was grossly unfair and made incorrect rulings on evidence and other procedural matters. The Authority is in complete disagreement.

STATEMENT OF THE CASE

Preliminary Statement

Before this Court ~~is~~ a petition (76-4151) to review a Federal Power Commission Order (Opinion No. 751) issued January 29, 1976 and a Federal Power Commission Order (Opinion No. 751-A) issued April 27, 1976. The ~~first~~ order (751) approved the design and location of the last of three ~~transmission~~ lines included in a license for a 1,000 megawatt (mw) pumped ~~storage~~ electric generating plant known as Blenheim-Gilboa Pumped Storage ~~Project~~ located on Schoharie Creek, Schoharie County, New York. (FPC Project No. 2685). The license was issued on June 6, 1969 upon application of Intervenor, Power Authority of the State of New York (Authority). The ~~second~~ order (751-A) denied rehearing on the first.

A separate petition (76-4153) for review of the same orders is also before this Court. It was brought by the Town of Durham and the Association for the Preservation of the Durham Valley. That proceeding is concerned solely with the Commission's denial of a request that the Commission or the ~~Power~~ Authority be required to pay petitioners in Case 76-4153 money ~~as~~ compensation for their lawyer's services and to reimburse them for ~~various~~ expenses. (Durham Br. p. 2 & 3).

This Court consolidated the two proceedings for argument purposes in an order entered July 19, 1976.

BEST COPY AVAILABLE

This brief will address itself exclusively to the first proceeding (76-4151) which seeks to set aside the Commission's orders approving the design and location of the transmission line. The Authority will submit a separate brief in the second proceeding. (76-4153).

Both review proceedings are brought pursuant to Section 313(b) of the Federal Power Act (16 USC §8251 (b)).

The transmission line here involved is known as the Gilboa-Leeds transmission line. It is approximately 35.4 miles in length, extending from the switchyard at the Blenheim-Gilboa Pumped Storage Project in Schoharie County into Albany and Greene Counties to the Leeds substation near Catskill, New York.

The Blenheim-Gilboa Pumped Storage Project

The generating facilities of the Blenheim-Gilboa Project are located in the towns of Gilboa and Blenheim in Schoharie County. Basically the Project proper consists of a dam across the Schoharie Creek which runs in a northwesterly direction until it reaches the Mohawk River at Fort Hunter, New York about four miles west of Amsterdam. The dam impounds water which constitutes the lower reservoir of the project. The water is pumped several hundred feet horizontally and then vertically about 1,000 feet through a tunnel into an upper reservoir built on the top of Brown Mountain. Power is generated by dropping the water down through

the tunnel and thence back into the lower reservoir.

The four units in the power house are designed so that the generators become motors when electric power is transmitted to them. The motors turn the turbines in reverse direction which pumps the water from the lower to the upper reservoir. When the water is released from the upper reservoir down through the tunnel the pumps are reversed, becoming turbines which turn the motors in the opposite direction to generate electric power. In the pumping phase the pumps are activated by the motor through the use of electric energy brought from generating plants of the Authority and others. In the generating phase the turbines activate the generators which produce electricity. The nameplate capacity of the program is 1,000 megawatts (mw) but it can produce at least 1,100 mw. The power plant houses the machinery through which the power is produced.

Federal Power Commission licenses are issued under Section 4(e) of the Federal Power Act which authorizes the licensing of project works. (16 U.S.C. A. 797(e)). The license issued by the Commission authorizing the construction, operation and maintenance of the Blenheim-Gilboa Project lists as project works the facilities just described, other facilities and also lists as project works

"...(6) a switchyard, located adjacent to the pumping-generating plant; (7) three 345 kv transmission lines; one to Delhi; one to New Scotland and one to Catskill (Leeds):..."
(Project No. 2685 Order Issuing License, p.8 R. 5655)

The license as issued did not specify the designs and precise locations of the three ~~transmission~~ lines. Rather, the license contained a condition, Article 34, ~~(R. 5658)~~* requiring Authority as the licensee to submit exhibits showing proposed design and locations of the three lines for Commission approval prior to construction of the lines. The project proper and the lines to Delhi (Fraser) and New Scotland (Albany) have been completed and were put into commercial operation in December 1973. The line to Leeds continues to be the subject of controversy and is now before this Court.

* References to the Record are denoted by an "R". The prefix "Tr." denotes a reference to the transcript of the Leeds Line hearings which comprises the first 4047 pages of the Record. References to Petitioners' brief will be cited as "Pet. Br. _____".

Procedural History of Gilboa-Leeds Line Approval

After studying ~~the~~ advantages and disadvantages of many alternate sites the Authority filed ~~an~~ application with the Commission for a Blenheim-Gilboa license on August 15, 1968 believing such a project to be:

"...best adapted to a comprehensive plan for improving or developing a ~~waterway~~ or waterways for the use or benefit of interstate or foreign commerce, for the improvement and ~~utilization~~ of water power development, and for other beneficial public uses, including recreational purposes..."

as required by Section 10(a) of the Federal Power Act. (16 U.S.C.A. §803 (a)).

The fact that the ~~application~~ had been filed was advertised by the Commission and copies including exhibits were made available in public places in the project area. Copies ~~were~~ sent to various Federal and State agencies and comments were invited ~~as~~ required by law and regulation. No opposition to the project developed. In fact, a considerable amount of affirmative support on the part of ~~local~~ groups, public and private, was manifested. (See, Order Issuing License, Project No. 2685, p. 2, R. 5649).

The Commission staff, including lawyers, engineers, hydrologists, power supply and transmission experts, environmental specialists, economists and others proceeded to work on the application, study the exhibits, suggest modifications of some proposals and generally to do what the Commission staff has been ~~doing~~ for many years in processing applications for licenses under the Federal Power Act. Some of the exhibits dealt with

land, some with engineering and electrical details, some with the environment, some with recreation (Exhibit R), and some with fish and wildlife (Exhibit S).

Additional information was requested of the Authority by the Commission staff and it was provided.

On June 6, 1969, the Commission issued the Blenheim-Gilboa license after considering, studying and approving favorable recommendations of the staff. Power Authority of the State of New York, Project No. 2685, 41 FPC 712 (June 6, 1969).

Article 34 of the license provided that the Authority submit for Commission approval Exhibits J, K and M showing proposed design and locations of the transmission lines, including the physical facilities constituting them. (R. 5655).

On November 24, 1969 the Authority filed with the Commission Exhibits J, K and M depicting the proposed locations and designs of the three lines. On January 21, 1970 petitions for leave to intervene in the proceeding with respect to the Leeds Line only were filed by the Town of Durham, the Association for the Preservation of the Durham Valley, by Brooks Atkinson and several other individuals with property in Durham. Subsequently, similar petitions were filed by the Greene County Planning Board, one other individual (a Durham landowner named Joe Segelman), the Town of Westerlo in Albany County, Congressman Hamilton Fish, Jr., and the Sierra Club. All such petitions were granted. (R. 5737-38; 5780-82).

On April 10, 1970 the Commission approved the exhibits for two of the lines but withheld approval of the Leeds Line because of objections filed against it. (R. 5701-07). These objections were largely filed by or on behalf of distinguished and mostly part-time residents of the Town of Durham in Greene County.

On January 1, 1970 the National Environmental Policy Act of 1969 (NEPA) (83 Stat. 852, 42 U.S.C.A. §4321, et seq.) became effective.

NEPA provided for the establishment of the Council on Environmental Quality, the members of which were to be appointed by the President. Nominations of Council members were confirmed on February 6, 1970.

In furtherance of the policy of NEPA the President issued Executive Order 11514 on March 5, 1970. It required the Council to issue guidelines recommended to be followed by Federal agencies in preparing environmental statements on proposals for major Federal actions significantly affecting the quality of the human environment. Interim guidelines were promulgated on April 30, 1970 (35 Fed. Reg. 7390). Final guidelines were published in the Federal Register on April 23, 1971 (36 Fed. Reg. 7724), and later revised on August 1, 1973. (38 Fed. Reg. 20550).

NEPA did not require Federal agencies such as the Federal Power Commission to establish rules and regulations for the carrying out of their functions pursuant to the Act but the President's order did. The Commission set to work drafting such rules and regulations. The procedures required to be followed in establishing rules and regulations take a minimum of many months. In the case of regulations adopted by the

Commission to implement NEPA a Notice of Proposed Policy Statement and Rulemaking was issued by the Commission on September 24, 1970. (35 Fed.Reg. 14848). After a period during which comments from eighteen parties were received and considered by the Commission, regulations which adopted many of the suggested modifications were issued on December 4, 1970 (FPC Order No. 415, 18 CFR Part 2).

The regulations promulgated by the Commission provided for the filing of a detailed environmental report by all applicants for a major project license developing fully the factors required by section 102(2)(C) of NEPA, circulation of the environmental report and consideration of the factors required by NEPA in contested proceedings before the Commission. See, 18 CFR §§2.80-82 (January 1, 1971).

NEPA imposed upon Federal agencies including the Commission the duty of taking many procedural steps including preparation of environmental statements prior to taking major Federal actions significantly affecting the environment.

The Federal Power Commission and other Federal decision-making agencies in studying NEPA during the years 1970 and 1971 failed to construe it in a manner resembling that in which the courts later construed it. They did not understand or contemplate that the obligations placed upon them by NEPA would be nearly so substantial as the courts later held. See, Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109 (D. C. Cir. 1971); Greene County Planning Board v. Federal Power Commission, (Greene County I) 455 F.2d 412 cert. denied 409 U. S. 489 (1972)

Calvert Cliffs' was one of the first decisions to jar Federal agencies and bring home to them that a great deal more was required of them by NEPA as interpreted by the Federal Courts than they had previously thought. Greene County I followed in January 1972.

On December 4, 1970 the Authority filed an application for approval of revised exhibits depicting alternate routes for the Leeds Line designated as Route A and Route B. (R. 5739-55). Only Route A had been in the original application. This application contained the same Route A with some modifications and also the new Route B largely to the north of Route A which had been laid out in good measure by Waring Blackburn, Director of Planning of the Greene County Planning Board and by Jack Collyer, the Resident Manager of the Authority's Blenheim-Gilboa Project. (Tr. 3900-18). The two men worked together. Mr. Blackburn's mission was in large part to avoid the Town of Durham where many objections to Route A had arisen but he aided the Authority in seeking to establish the best possible alternate to Route A. (Tr. 3900-18). Many engineers, environmentalists and others worked on both routes long and arduously in an effort to establish the best practical alternate routes with the least adverse effect on the environment.

The Authority on March 26, 1971 filed an environmental report for the Leeds Line (R. 4269-4324) as recommended by the Council of Environmental Quality Guidelines and required in the Federal Power Commission regulations which had been issued more than a year after the initial application for approval of the line was filed in November 1969. The March 1971

report was probably one of the first environmental reports filed throughout the United States. In addition to Routes A and B the report depicted three additional alternate routes designated C, D, and E, each of which had been suggested by officials, individuals or groups of individuals in Greene County. In addition, the report considered the feasibility and environmental effects of placing the Gilboa-Leeds Line underground and utilized a hypothetical "ideal" route in detail. (R. 4269-4324). It also considered other environmental factors and need for the line.

As noted supra, Federal Power Commission regulations issued on December 4, 1970 required that a detailed statement be submitted by the applicant considering the factors enumerated in NEPA to be reviewed by the Commission Staff and revised if necessary. 18 CFR § 2.81 (b) (1971). The regulations provided further for circulation of the applicant's statement among appropriate Federal, State and local governmental bodies after the Commission Staff reviewed it and if deemed desirable caused it to be revised. These requirements were all complied with.

Because Route B traversed the Town of Greenville, the Town filed a petition for leave to intervene. (R. 5731-35). It was granted by the Commission on May 4, 1971. (R. 5780-82).

An Examiner, later called Administrative Law Judge (ALJ), held a prehearing conference on June 22, 1971.

A study was underway with respect to a second pumped storage plant in the Catskill area when the pre-trial conference on the Leeds Line was held on June 22, 1971. Counsel for Authority announced that the possibility of building another plant on the Schoharie Creek was being considered and advised the ALJ and all parties that they would be kept advised of developments. This was done.

Following the exhaustive study it announced it would make at the June 22, 1971 Leeds Line prehearing conference, Authority filed an application on March 30, 1973 with the Federal Power Commission for a license to build a 1,000 mw plant at the Breakabeen site on Schoharie Creek about five miles north of the Blenheim-Gilboa Project. *

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- * When Authority filed its application for a Blenheim-Gilboa license in 1968 it had no idea at all that it would later turn out to be considered economically, financially and engineeringly most desirable to build another plant on the Schoharie Creek.

In 1968 it was thought that the Blenheim-Gilboa Project would be used principally for the benefit of upstate New York because Consolidated Edison was then still hopeful of building a proposed 2,000 mw pumped storage plant at Cornwall, about 25 miles north of New York City on the Hudson River. Authority had no intention of building a second plant on the Schoharie Creek and so stated in its August 1968 application for license for the Blenheim-Gilboa Project. However, by 1970 the prospects of the Cornwall plant being built were not good and power studies and projected needs indicated that a second pumped storage plant should be built in the general area south of Albany and west of the Hudson. After a thorough review of the various alternate sites considered prior to the Blenheim-Gilboa application and after consideration of additional possible sites, Authority determined that the best available site for a second plant was at Breakabeen on the Schoharie Creek about five miles north of the Blenheim-Gilboa plant.

There is a great deal of opposition to building a power project at Breakabeen largely because it would flood out about 500 acres of arable land of high productivity when used. Most of it had not been used for some time but the idea of making it unusable is objectionable to many.

Both before and after the pre-hearing conference on June 22, 1971 intervenors including petitioners made myriad motions to the Administrative Law Judge (ALJ) and to the Commission on various subjects. Among the motions was one to vacate, rescind, suspend or revoke the project license on various grounds, principally with respect to alleged violations of NEPA which did not become effective until after the license was issued on June 6, 1969.

footnote, continued.

At the time the Blenheim-Gilboa studies were being carried on consideration was given to utilizing as the lower reservoir for the pumped storage project the reservoir of the New York City Board of Water Supply Catskill Mountain Project, about two miles north of Gilboa. Inquiries among Water Supply and other City officials were very negative however and the proposition that a proposal for dual use of that reservoir for power purposes and water supply was not pushed by Authority. In the intervening years, however, the City attitude seems to have changed with the result that in October 1975 Authority amended its application for the Breakabeen Project which had been pending since March 1973 and with respect to which no hearing has yet been held to add what is known as the Prattsville site on a City reservoir as an alternate. Authority has indicated that Prattsville is now the preferred site rather than Breakabeen for a second Schoharie Valley pumped storage plant.

The Power Authority Act was amended by the New York State Legislature after application was made for the Blenheim-Gilboa Project and after Breakabeen was studied, extending the Authority's powers for the benefit of the southeastern part of New York State. The Act was amended in 1972 to authorize the Authority to construct baseload generating facilities necessary to alleviate the shortage of dependable power capacity in the southeastern part of the State and to ensure an adequate and dependable supply of electricity for the Metropolitan Transportation Authority, its subsidiary corporations and the New York City Transit Authority. (Chapter 489, Laws of New York, McKinney's 1972 Session Laws of New York; Governor's Memorandum Approving L. 1972, c. 489, McKinney's 1972 Session Laws, at 3396 (May 24, 1972)). Pursuant to that mandate Authority conducted studies to determine the feasibility of building a nuclear generating facility at various sites, including Athens (near Leeds) and Cementon about 20 miles south of Leeds. Athens was also studied as the possible site of a fossil-fuel plant instead of a nuclear plant. Other possible sites for such plant were also studied.

After a substantial time passed without action by the Commission on the motions, petitions were filed with this Court for review of orders alleged to have been denied by the Commission sub silentio. The Commission, in fact, granted rehearing and by orders dated October 28 and 29, 1971, it formally denied petitioners' appeals.

footnote, continued.

Not until May 1975 did Authority announce the choice of Cementon in Greene County as the primary site for its 1,200 mw nuclear plant. An application for a construction permit was filed with the Nuclear Regulatory Commission in July 1975 and Authority applied for a certificate of environmental compatibility and public need from the State Board on Electric Generation Siting and the Environment in September 1975. Petitioners here have intervened in both proceedings.

The Power Authority Act was further amended in 1974 to authorize and direct Authority to acquire two partially completed generating plants, one in New York City and one in Westchester County, from the Consolidated Edison Company of New York in order to alleviate Con Edison's financial distress, to insure completion of the plants and to assure an adequate and dependable supply of electricity in the New York metropolitan area. (Ch. 369, 370, L. 1974, McKinney's 1974 Session Laws of New York; Governor's Memorandum Approving L. 1974, ch. 369, 370, McKinney's Session Laws, at 2094 (May 17, 1974)). Authority acquired from Con Edison and has substantially completed construction of the nuclear plant (Indian Point 3) and the oil-fired plant (Astoria 6). The nuclear plant has begun commercial operation and the oil-fired plant is expected to later this year.

Hearings before the ALJ began on November 19, 1971 after several delays and were carried through January 8, 1972 by which time most of Authority's direct case had been presented. Hearings were scheduled to resume on February 15, 1972.

In the meantime, on January 17, 1972 this Court acted on the petitions to review and rendered the decision known as "Greene County I", (455 F.2d 412 (2d Cir. 1972)). That decision held that Draft and Final Environmental Statements should have been prepared by the Commission Staff and circulated prior to the commencement of hearings. The Court held that the Commission's regulations making the Applicant's Environmental Report (R. 4269) serve as the Commission's statement required by NEPA were invalid. However, the Court held that hearings could continue during the preparation and circulation of such documents but that the record was not to be closed until the Final Environmental Impact Statement (FES) was available for cross-examination of Commission and Authority witnesses on its contents. *

However, the Commission elected to suspend hearings pending decision on a petition for certiorari which it filed with the United States Supreme Court. The Authority joined intervenors in opposing the application

* Petitioners have repeatedly stated or given the impression in various briefs that this court barred all Commission proceedings until draft and final environmental statements were prepared and circulated. See their current brief at pp. 13 and 61 and in the draft brief attached to their Affidavit in Support of a Stay.

for certiorari and requested the Commission to comply with this Court's decision because it was anxious to get the Leeds' issues resolved so that the line could be built as soon as possible.

The Supreme Court denied certiorari on October 10, 1972. The Commission then reopened the Leeds proceedings and proceeded to amend its rules and regulations. (FPC Order No. 415-C (November 6, 1972)). The Commission filed a Draft Environmental Impact Statement (DES) on January 15, 1973, duly circulated it and received comments on it. The Commission filed its Final Environmental Impact Statement (FES) on May 21, 1973. In the meantime Authority had filed its application for a license for the Breakabeen Project on March 20, 1973. *

Hearings before the ALJ resumed on July 2, 1973 and continued through September 19, 1973. In the interim the ALJ and the Commission were besieged by many, many motions and a great many appeals to the Commission from rulings of the ALJ. On October 18, 1973, petitioners in this case and in case No. 76-4153 filed new petitions with this Court for review of orders alleged to have been denied by the Commission sub silentio and requesting a stay of all proceedings in the Leeds Line proceeding before the Commission.

On December 27, 1973 the new petitions were denied including one to require the Commission to file a new DES and FES covering all generating and transmission projects contemplated, planned or considered no matter by whom in a vast area of the State. This Court also denied the stay of the Leeds Line proceedings which petitioners had requested. Judge Mansfield dissented in an opinion. Greene County Planning Board v.

* Text of footnote on next page.

*In the light of evidence presented in the early stages of the hearing, particularly by the Commission Staff, indicating that more transmission capacity than could be provided by a 345 kv Gilboa-Leeds circuit would be needed between those two points if a second pumped storage project is constructed on Schoharie Creek Authority presented testimony and exhibits on May 30, 1972 (placed in hearing transcript on November 29, 1972 (Tr. 1969-1984) showing the design, width of right-of-way, and details of structures for a Gilboa-Leeds Line which would initially provide one 345 kv circuit between the two points, but could accommodate a second 345 kv circuit on the same towers and right-of-way if needed in the future. Should the need arise the two 345 kv circuits could be converted to a single circuit 765 kv line by rearranging the conduits on the same towers. This is the type of line the Commission ordered the Authority to construct.

Federal Power Commission (Greene County II), 490 F. 2d 256 (2d. Cir. 1973). Rehearing en banc was denied on March 22, 1974.

Final briefs in the Leeds Line proceeding were submitted to the ALJ in April 1974. On July 1, 1974 the ALJ rendered his decision approving location of the Gilboa-Leeds Line on Route B-1 (a modification of Route B) and approving design of the line.

The ALJ established the types of towers to be employed at various locations. He directed that the towers be of types capable of carrying either one or two 345 kv circuits and also capable of being converted to one 765 kv circuit.* Only a single 345 kv circuit was authorized for construction. (R. 8005, App. 60). However it was made clear that if a second circuit were to be added or the line converted to 765 kv a new independent application would have to be made to the Commission. (R. 7050, App. 60).

The ALJ found that a single circuit 345 kv line is needed now to carry Blenheim-Gilboa power to Leeds but that if an additional pumped storage plant should be built in the Schoharie Valley in the future an additional 345 kv circuit to Leeds would be required. (R. 7050, App. 60). He held that for environmental and costs reasons and in order to comply with Section 10(a) of the Federal Power Act the Gilboa-Leeds structure should be designed to carry on the same right-of-way and on the same towers a second 345 kv circuit from any new plant to Leeds and that the line should be capable of conversion to a single 765 kv line if future events warrant it.

* Intervenor Greene County and the Town of Greenville first suggested that the Leeds Line be a double rather than a single circuit line. (R. 5790-5826). The Authority adverted to this fact at the June 22, 1971 prehearing conference and pointed out that consideration should be given to whether the line should be a double circuit line in the hearings. (Tr. 7). Detailed exhibits showing double circuit design were presented at the hearings.

The initial decision of the ALJ pointed out that Leeds is a junction point of two 345 kv lines which come south from Albany, a 345 kv line which comes north on the west side of the Hudson River from Roseton near Newburgh from whence lines proceed to the New York City area, and two 345 kv lines which cross the River near Leeds and go south to Pleasant Valley near Poughkeepsie where they connect with four Con Edison lines to New York City. * (R. 7052-59). Two of the Con Edison lines are 345 kv and two are 138 kv. The two 138 kv are being stepped up to 345 kv and the existing 345 kv lines are to be rebuilt to carry a greater quantity of power.

The ALJ ordered that a Board of Environmental Consultants be set up to make various decisions respecting the environment which must be made to carry out many of the conditions in the proposed license he approved. He directed that the Board continue to operate throughout the construction period and up to three years thereafter monitoring environmental activities. (R. 7105-06).

The Commission affirmed with some modifications the initial decision on January 29, 1976. (FPC Opinion No. 751). Its order is before this Court for review.

The Commission directed that construction not begin until the Board of Environmental Consultants filed its report and until various exhibits affecting the environment should be approved by the Commission. This finally came about on September 15, 1976.

* There are also four 115 kv lines from a huge switchyard at Leeds which cross the River parallel to the two 345 kv lines.

In the meantime petitioners intervened in various other proceedings involving applications to build generating and transmission facilities including the Breakabeen proceeding (FPC Docket No. 2729) and one before the Nuclear Regulatory Commission where Authority is seeking a license for a 1,200 mw nuclear plant (NRC Docket No. 50-549) at Cementon. They even intervened in an application of Authority to the Federal Power Commission for a Presidential border crossing permit for a 765 kv line which is being constructed from Quebec crossing permit for a 765 kv line which is being constructed from Quebec to Utica despite the fact that Congress specifically authorized the Commission to grant the permit without filing an Environmental Impact Statement. (Energy Supply and Environmental Coordination Act of 1974 (15 U. S. C. A. §793(d)); See also Executive Order No. 10485 (3 CFR 970 (1953)).

The 765 kv line is to run from Quebec to the vicinity of Authority's St. Lawrence plant at Massena and thence to Utica, a total distance of approximately 155 miles. It will make available at least 800 mw of firm hydro power from the northern regions of Quebec largely for southeastern New York during seven months when the loads in the area are highest. The price of this power is much less than the cost of fuel to run electric power generating plants. The term of the arrangement is a long one. The State Public Service Commission has authorized construction of the line but is still holding hearings with respect to health and safety issues involving 765 kv transmission. (PSC Opinion No. 76-2 (February 6, 1976)).

Petitioners' various interventions constitute efforts to stop all the other plants in order to decrease the likelihood that transmission facilities in addition to those needed for carrying power from the Blenheim-Gilboa power plant to Leeds will be built in the same corridor. The object is of course also to seek to keep the Leeds Line from being built.

When the Federal Power Commission denied the petitioners' demands that NEPA procedures be followed in the 765 kv border crossing case they sought review in this Court which dismissed their petition on the ground of lack of jurisdiction under the Federal Power Act to review the actions taken by the Commission under the Energy Supply and Coordination Act of 1974 and Executive Order No. 10485. Greene County Planning Board v. Federal Power Commission (Greene County III), 528 F. 2d 38 (2d Cir. 1975).

ARGUMENT

Jurisdiction of Federal Power Commission

Petitioners ~~throughout~~ the proceeding and in their current brief (p. 43) in their ~~argument~~ that the line is not needed have, in effect, contended the ~~Commission~~ does not have jurisdiction to approve the design and location of ~~the~~ Leeds Line as part of the project works of the licensed Blenheim-Gilboa Pumped Storage Project.

They correctly point out that the Commission's sole jurisdiction over construction of ~~transmission~~ lines as part of a licensed project is derived from subdivision (11) of Section 3 of the Federal Power Act which reads as follows:

"(11) '~~project~~' means complete unit of improvement or development, ~~consisting~~ of a power house, all water conduits, all dams and appurtenant works and structures (including navigation ~~structures~~) which are a part of said unit, and all storage, ~~diverting~~, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous ~~structures~~ used and useful in connection with said unit or any part thereof, and all water rights, rights-of-way, ditches, ~~lands~~, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit; [41 Sta. 1064 49 Sta. 838-839; 16 U. S. C. 796 (11)] (emphasis added)

Petitioners ~~argue~~ that once a licensed project generating plant is connected by a ~~primary~~ line or lines with the interconnected primary transmission system any additional line subsequently built from the project generating ~~plant to~~ the interconnected primary transmission system

is not a primary line and is not within the jurisdiction of the Commission. They point out that primary lines from the project to New Scotland and Fraser already connect the Blenheim-Gilboa Project generating plant to the interconnected primary transmission system and contend that therefore the Leeds Line when built will not be a primary line.

Petitioner contends that "the only possible justification for the line is [as] an integral and inseparable part of a larger comprehensive plan of interrelated electric power facilities in which the lines primary function would be for the overall system." (Br. P. 34) We do not believe that either statement is correct but if held to be correct there would be no federal prohibition against the Authority's building the Gilboa-Leeds line.

Greene County Planning Board v. FPC, 528 F. 2d 38 (2d Cir. 1975).

Moreover it could build the line under State law without further State approval. The line is not subject to the State Public Service Commission jurisdiction under Article VII of the Public Service Law because the line was determined upon by the Authority and bonds were sold to pay for it before Article VII of State Public Service Law became effective. Thus the Authority would have a right to build it without any governmental authorization other than its own determination as an administrative board under the State Power Authority Act which authorizes it to make such determinations. N.Y. PUB. SER. L. § 121(4)(b) (McKinney 1970); N.Y. PUB. AUTH. L. §§1005, 1010 (McKinney 1975).

Status of Petitioners

Both Greene County and the Town of Greenville decided not to continue litigative proceedings after the Federal Power Commission approved the Leeds Line and both absolutely refused to appropriate any money for court review.

However, a group of landowners along Route B-1, the route selected by the ALJ and the Commission objected to the line's being built in their neighborhoods. They formed an association called the Tri-County Power Line Association. Many of the members including the President and Vice-President of the Association live in Albany County.

The Greene County Board of Legislators did not take any official action authorizing the Association through its counsel, who throughout the Leeds Line proceedings had represented the County and the Town, to seek review in the name of the Greene County Planning Board. However, it did have an executive session at which the Chairman and the Executive Director of the Planning Board were present. It has been reported that the members agreed that if the Tri-County Power Line Association were to pay all expenses the Association could file a petition for review in the name of the Planning Board with the County bearing no responsibility whatever for their acts. We have sought the minutes, if any, of any official action taken by the County Board of Legislators and have been informed that none exist. Evidently no public meeting on the subject was held. It is clear that

in camera decisions of the Board are not of legal consequence.

The Town Board of Greenville held two public meetings. At a June 11 meeting the Board unanimously adopted a resolution, the minutes of which read as follows:

RESOLUTION

TRI-COUNTY POWER LINE ASSOCIATION TO
ASSUME ALL FINANCIAL RESPONSIBILITY THAT THEY
MAY INCUR THROUGH LITIGATION OF THE GILBOA-LEEDS
LINE, ROUTE B-1.

I, Kenneth Huemmer hereby resolve that the Town of Greenville or its Town Board shall not be held responsible for any indebtedness incurred by the Tri-County Power Line Association. Seconded by Phillip Butler.

Ayes 5 Noes 0

Andrew H. Macko Supervisor
Kenneth Huemmer Town Justice
Leonard Gardner Town Justice
Philip Butler Councilman
Roy E. Gundersen Councilman

SEAL

JEANNE BEAR
Town Clerk

The minutes of the second meeting held on June 18 read as follows:

June 18, 1976

Motion ~~made~~ by Leonard Gardner seconded by Roy Gundersen that ~~the~~ Town of Greenville act as intervenors with the Tri County ~~Power~~ Line Association paying the fees.

Ayes 4

Nayes 1

Hence, what we ~~have~~ here is a situation where Greene County and the Town of Greenville are nominal petitioners in a court review proceeding but a group of ~~property~~ owners who did not participate in the Federal Power Commission administrative proceeding are the real parties in interest.

It is difficult to ~~understand~~ how two public bodies can validly allow use of their status as ~~parties~~ to a Federal Power Commission proceeding to bring about a court ~~review~~ of the final order issued in that proceeding while at the same time ~~completely~~ disclaiming any financial responsibility for whatever may happen as a result of the court review brought about and paid for by landowners who were not parties or participants in any capacity in the Commission's proceeding. * Cf. Eastern Utilities Commission v. AEC, 424 F. 2d 847, 851 (D. C. Cir. 1970)

It is the Authority's contention that under the circumstances set out above the petition for ~~review~~ filed by Greene County and the Town of

* By contrast several ~~land~~owners in the Durham Valley who objected to Route A-1 intervened individually and participated in the Commission ~~proceeding~~. They did not petition for court review. One town in Albany County also was a party to the Commission proceeding and did not petition for review.

Greenville should be dismissed and the Authority respectfully requests
this Court to do so.

The Need for the Gilboa-Leeds Line

Petitioners' brief maintains on pp. 27-28 that the Judge was wrong in his Initial Decision in holding that a single circuit 345 kv direct line to Leeds is needed now and that in order to comply with Section 10(a) of the Federal Power Act and NEPA the line approved should be capable of carrying two 345 kv circuits convertible to one 765 kv circuit able to carry far larger quantities of power than that generated by the Blenheim-Gilboa Project.

In their brief Petitioners make several misstatements in discussing the "need" issue. We do not have time or space to comment on them, however.

One of the basic needs for the Leeds Line is to insure the reliability and stability of the Blenheim-Gilboa Plant and the lines connected to it.

Every engineer who testified at the hearings and every engineer who participated in the planning or approval of the planning of the transmission network of the Blenheim-Gilboa Project by whom testimony was given at the hearings on the subject unequivocally stated that in his judgment the Leeds Line is necessary. Not a scintilla of contrary engineering or power operation evidence was presented.

In their first presentation to the New York Power Pool the consulting engineers employed by the Authority to plan transmission facilities from the Blenheim-Gilboa Project included in their preliminary recommendation a

line from the Blenheim-Gilboa Project to Leeds and another to Fraser. *
TR. Vol. 6 at 898. The Planning Committee of the Power Pool upon
revision of the Authority's preliminary planning reached the conclusion
that for the reliability and stability of the Blenheim-Gilboa Project and
of the Northeast electric system of which it is a part and other reasons
there should be those two lines plus one to New Scotland. (Tr. Vol. 2A
at 376). The Authority's consulting engineers upon completing studies
then in progress reached the same conclusion.

The Power Pool unanimously endorsed the proposition that all
three lines should be constructed as part of the Blenheim-Gilboa Project.
(Tr. Vol. 2A at 376). In doing so the Power Pool affirmed the conclusions
previously reached by the Authority's own staff engineers and by its
consulting engineers upon completion of their studies and subsequently
reached by the FPC's engineers.

To check such judgments various modern sophisticated computer
analysis tests were run. The tests confirmed the need for the Leeds
Line from the standpoint of reliability, stability and "transfer capability".

* There was never a time when a direct line to Leeds was not considered
necessary.

(Tr. Vol. 2A at 385-387, Ex. 12 through 17; Tr. Vol. 15 at 2017). They indicated that until the 345 kv line proposed to be built from Fraser to Ramapo (Southern Tier Connection) is completed, and even after it is completed, whenever it is out of service, if there is no Leeds Line a normally cleared three-phase fault on the Gilboa-New Scotland Line or even an inadvertent opening of such line will result in instability of the Blenheim-Gilboa Project and all generators will be forced out-of-service. Under the same circumstances in the case of a three-phase fault with delayed clearing the plant is of course unstable and all generation will be lost. (Tr. Vol. 2A at 387).

Even if the Southern Tier Connection is completed and is in actual service, absent a Leeds Line inservice a three-phase fault with delayed clearing on the Gilboa-New Scotland Line will result in instability of the Blenheim-Gilboa Project (Tr. Vol. 2A at 387). The effect on the rest of the system will of course depend upon circumstances at a given time, e.g., what the system load is, what generation may happen to be down and what system transmission lines are out of service.

A practical example of the significance of what these tests show as to the need for the Leeds Line is the fact that at present without a Leeds Line whenever the New Scotland Line is out of service for maintenance or for any other reason the output of the 1,000 Mw Blenheim-Gilboa Project must be reduced to 200 Mw. (Tr. Vol. 20 at 2983). Doing so whether as a result of a fault, equipment failure, operator error or maintenance cannot

possibly be considered satisfactory operation. Even if the Southern Tier Connection is completed there will be a restriction on output of the Blenheim Gilboa Project when the New Scotland Line is out of service.

Taken another way, the Blenheim-Gilboa Project has been operating at its full rated capacity of 1,000 Mw since December 15, 1973, but due to the transmission limitations out of the Blenheim-Gilboa Project, specifically the lack of the Leeds Line, generation output must be reduced from 4 units to 2 units for normally cleared faults on, or even an inadvertant opening of, the New Scotland Line. For more severe faults the output would have to be reduced to one unit.* If the New Scotland Line should remain out of service for an extended period due either to maintenance activities or need to replace defective components, the Blenheim-Gilboa Project output would be reduced to 200 Mw. Obviously, since the loss of the New Scotland Line is a first contingency situation that can occur due to many causes ranging from uncontrollable acts of nature to equipment failure, the reliability of the Blenheim-Gilboa Project is seriously affected by its having to operate without the Leeds Line.

The availability of the Leeds Line to provide a third connection between the Blenheim-Gilboa Project and the interconnected system will eliminate the need for reducing plant output following the loss of the New Scotland Line. In addition after the Leeds Line is built the Blenheim-Gilboa

*Due to delay in construction of the Leeds Line Authority has installed relaying equipment at Blenheim-Gilboa Project and at New Scotland Substation to maintain some generation on the line following loss of the New Scotland line. Without the relaying equipment all generation would be lost under all contingencies involving the opening of the New Scotland Line. (Tr. Vol. 15 at 2017).

Project can be operated at maximum capacity with any one of the three lines out of service for maintenance.

There is no question whatever that the Leeds Line which will be capable of carrying power toward New York City by the shortest route is the most important of the three lines licensed for the Blenheim-Gilboa Project and should be built not only because of the advantage to the reliability and stability of the Blenheim-Gilboa Project itself and of the system of which it is a part, but also for the purpose of providing a path to carry power to the New York City area in times of relatively high loads and particularly at times of critical loads.* As we shall show it is also needed to provide the New York area with far cheaper power than that which can be generated there.

*When Authority's witness Boston was on the stand on August 14, 1973, he described the power situation which prevailed in the Con Edison territory on August 9, and 10, 1973. The State's peak load on the 9th was 19,812 mw and 19,943 mw on the 10th. Con Ed's peak load was 8,149 mw on the 9th and 8,156 mw on the 10th. All or virtually all of its generating facilities were in working order. Its actual generation in the peak hours was 6,125 mw on the 9th and 6,335 mw on the 10th. Therefore, it had a deficit of 2,024 mw on the 9th and 1,821 mw on the 10th. It succeeded in purchasing 1,080 mw on the 9th and 900 mw on the 10th from the New York Power Pool, the Pennsylvania, New Jersey, Maryland (PJM) Power Pool and Ontario Hydro above its normal purchase of contracted power. It ended up with 50 mw to spare. The power available to the New York Power Pool included 500 mw from the Blenheim-Gilboa Project of which at that time two of the four generators were operating commercially. If there had been a mishap to any of Con Ed's generators it of course would have had a deficit. Conversely, if the Project's two remaining Blenheim-Gilboa generators had been in service as they were soon thereafter, an additional 500 mw or somewhat more than that would have been available to the Power Pool. However, it is extremely doubtful that there would have been any way to get the power to the New York area from upstate. If it were possible to make delivery it would have been through other states. (Tr. Vol. 21 at 3147-3150 and New York Power Pool public record.)

Intervenors pointed out during the hearings that some of the types of mishaps which befall transmission lines and put them out of service do not happen often and are denominated as "possible but improbable." See for example Exhibit 44 "New York Power Pool Study No. 12." (Tr. Vol. 7 at 1325).

The improbable has a habit of happening at the worst possible times as experience amply demonstrates. Besides there are so many possible causes for transmission outages that cumulatively they are not improbable.

One of the chief advantages of a pumped storage power plant is that it can be turned on instantaneously in times of crises. If it is not available for instantaneous use because of transmission deficiencies it loses a good part of its usefulness, particularly as far as the general public is concerned. While complicated computer tests are useful, each test is based upon so many assumptions that the answer given by the computer is valid only if none of the assumed elements is eliminated. Examples are loss of load, loss of generation and loss of transmission throughout wide areas as well as increases in generation through construction of new plants and increases or decreases in ability to purchase power from others. The tests are valuable to confirm the judgments of both the theoretical engineers

*(Cont'd.)

Mr. Boston testified that on Thursday, August 9, 1973 the total available reserve in the State was less than 3% which was insufficient to cover either the loss of the largest operating unit or the second largest operating unit.

Mr. Boston testified that on August 10, 1973 the New York system was down to zero reserves. (Tr. Vol. 21 at 3149).

Mr. Boston pointed out that there had been voltage reductions through the summer not just in the metropolitan area but throughout the State and campaigns had to be waged to encourage people to cut down in power use especially the use of air conditioning.

and the practical men who run power plants and transmission lines.

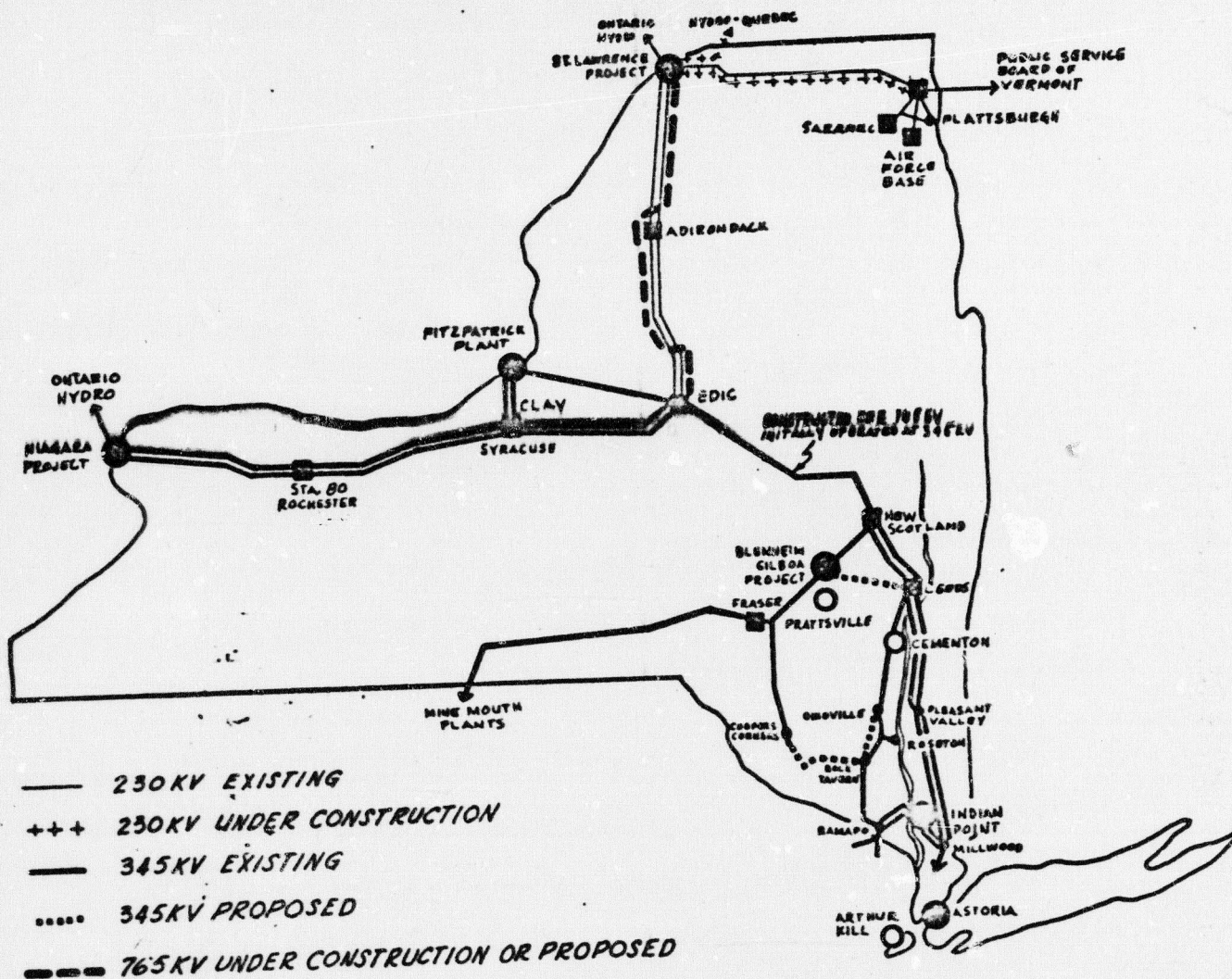
Insuring reliability and stability is of course only one of the bases for the need of the Leeds Line.

Examination of a map of New York State showing 345 kv transmission lines, existing, authorized or in the process of authorization north of the New York City area and south of a line drawn from Albany to Binghamton on the west and to the Massachusetts border on the east demonstrates the need for the Leeds Line and that failure to build it would be illogical and against the public interest. The sketch on the next page constitutes such a map.

The 1,000* Mw minimum fully operating capacity of the Blenheim-Gilboa Project represents almost 4% of the total installed generating capacity of the State and approximately 10% of the total installed generating capacity of Consolidated Edison Company (Con Ed) the principal supplier of power in New York City and Westchester. Most critical loads occur in the upstate area in the winter and in the New York City area in the summer.

The output of the Blenheim-Gilboa Project is used throughout the State as critical demands require regardless of the locations of the territories of the utilities to which the power is directly sold and the amounts sold to each. Control of the flow of the power is exercised by the New York Power Pool.

*When the upper reservoir is full the Blenheim-Gilboa Project produces as much as 1,148 megawatts.



- 230KV EXISTING
- +++ 230KV UNDER CONSTRUCTION
- 345KV EXISTING
- 345KV PROPOSED
- 765KV UNDER CONSTRUCTION OR PROPOSED

■ SUBSTATIONS

● AUTHORITY PROJECTS

○ PROPOSED AUTHORITY PROJECTS

POWER AUTHORITY Transmission Facilities and
Facilities of Others Available as Needed

As shown on the sketch, the 345 kv line from Gilboa to Fraser connects with a New York State Electric & Gas Company (NYSE&G) 345 kv line which (i) proceeds from Fraser westerly through Oakdale in the Binghamton area along New York's southern border to the Homer City coal region of Pennsylvania where the company is part owner of a large generating plant and (ii) proceeds southerly to Coopers Corner where it will connect with proposed 345 kv lines of the Orange and Rockland Utilities Company (Orange and Rockland) and Con Ed which when completed will connect with lines to and in the New York City area and New Jersey. Construction of the proposed 345 kv line from Coopers Corners to Rock Tavern is indefinite. The several sections of the lines from Fraser to Ramapo are known collectively as the Southern Tier Connection.

The Authority's 345 kv line from the Blenheim-Gilboa Project to New Scotland (Albany) as shown on the sketch connects with 345 kv lines of the Niagara Mohawk Power Corporation (Niagara-Mohawk) which proceed across the midriff of the State to Utica where they connect with 345 kv lines of Authority which extend to its generating projects at Oswego and Niagara Falls. Connecting lines proceed from Utica to the extreme northeast section of the State as well as to the south and to Pennsylvania. Authority's St. Lawrence Project (FPC Project No. 2000) is connected to the 345 kv grid at Utica via 230 kv lines. A 765 kv line is being built from Utica to the St. Lawrence and Quebec. The Authority has lines connecting the switchyards at its Niagara Falls Power Project (FPC Project No. 2216) and its St. Lawrence Project

with Ontario Hydro.

Neither the Gilboa-New Scotland nor the Gilboa-Fraser Line can take Blenheim-Gilboa Project power to the points where it is needed a good part of the time. Carrying the 1,000 Mw output of the Blenheim-Gilboa Project to Fraser even if it did not cause disruption to the New York State Electric and Gas Company's system -- which it would -- would be a futile exercise because there would be no way of taking the 1,000 Mw from Fraser to where it would be needed. If 1,000 Mw were carried to New Scotland at a time when power was needed south of Albany and Niagara Mohawk's two lines from New Scotland to Leeds were thus in full use, there would be no way of carrying the Blenheim-Gilboa power to Leeds and thence to points where needed in the absence of the Gilboa-Leeds Line.

From Albany south to Leeds there are only two 345 kv lines whereas from Leeds to the New York City area there are three. One 345 kv line proceeds south from Leeds on the west side of the river and the other two cross to the east side of the river at Leeds and proceed south. The line on the west side is complete to Ramapo (Suffern) from whence there are lines to Westchester and New York City, some of which pass through New Jersey. The Leeds Line together with the Authority's Gilboa-New Scotland Line will provide a badly needed third 345 kv circuit from Albany to Leeds through the Gilboa switchyard.

In addition Leeds is the northern terminus of the Central Hudson Gas and Electric Company (Central Hudson) territory (one of the contractors for Blenheim-Gilboa power) on the west side of the Hudson and without a line from the Blenheim-Gilboa Project to Leeds, Authority would have no direct connection with that company.

The generation capabilities of the utilities which serve the New York City area in normal times do not provide nearly the amount of reserves necessary to supply the needs of the area in times of maximum loads when a substantial amount of generating capacity is out of service as is very often the situation.* The area has relied upon the Authority and the upstate utilities which are also members of the New York Power Pool as well as on the Pennsylvania, New Jersey, Maryland Power Pool, the New England Power Pool and Ontario Hydro to supply much of its needs in times of heaviest demand even when all the generating facilities in the New York City area are in operating condition.

The amount of power which can be delivered to the New York City area from Authority's Blenheim-Gilboa Project and its other projects as well as by other upstate members of the New York Power Pool and Ontario-Hydro is limited by the transmission situation south of Albany. Currently the major bottlenecks are between Albany and Leeds, between Leeds and Pleasant Valley at which Con Ed's transmission facilities join with Niagara

*For the summer periods 1970-1972 a daily average of about 23% of Con Ed's installed generating capacity was unavailable because of forced outages or otherwise unavailable. This figure does not include capacity not available due to scheduled maintenance. Power Pool rules require the member companies to provide at least an 18% installed reserve at all times. This means that about 15% of the capacity of their plants may not be sold as firm power unless they have firm purchase agreements for the supply of all or part of the reserve.

Mohawk's, and between Pleasant Valley and Milwood in Westchester County where Con Ed's facilities are being upgraded. (Tr. Vol. 2A at 399; Vol. 20 at 2017, 2043A).

Once the Leeds Line is completed even if an increase in the capacity of the transmission facilities between Leeds and Pleasant Valley has not yet been completed, the Leeds Line will be very useful as far as getting power from the Blenheim-Gilboa Project to the New York City area via Pleasant Valley is concerned on a day-to-day basis regardless of the "transfer capability". *

This was demonstrated by Authority's witness John W. Boston, the Authority's Director of Power Operations, at pp. 3159-3160 of the Record:

"THE WITNESS: Transfer capability refers to a definition established by criteria that is prevalent in the New York Power Pool today, standards that they have set up.

"BY MR. MOORE:

"Q. And do those standards restrict the amount of electricity which can be carried over given wires at a given time?

"A. To live within those standards, it doesn't physically restrict, it restricts the operation in terms of how you can function with those particular facilities. Physically it does not restrict.

"Q. Without those standards could more electricity be carried?

"A. Yes, and I should point out that those standards are set up based on a peak condition of the year, and indicate the maximum amount of power transfer that can be handled across an interface without exceeding what has been established as a rating on any particular facility when a first contingency, or worse-case contingency occurs, which could be depending on the facility whether it is the loss of transmission or generation or whatever.

*See page 42 for definition of "transfer capability".

"Now, those conditions which are worse-case conditions, of course, don't occur every day of the year, in fact they occur very infrequently.

Therefore capacity does exist at various times, and therefore if we were to talk about a practical system, a day-to-day operation and not in terms of a definition as transfer capability, why of course then from an operating standpoint the answer would have to be the reverse of this.

But from the definition of transfer capability, the answer has to be that.

"Q. So if you did have a line from Gilboa to Leeds, then day to day electricity would be carried across the river to Pleasant Valley and down?

"A. Load flows as much as 600-700 megawatts flowing from Gilboa to Leeds, if the Gilboa to Leeds line is in."

Authority's witness George C. Loehr demonstrated through the results of tests that when the Southern Tier Line is in service* and the lines from Leeds to Millwood increased in capacity, the "transfer capability" from the area where the Blenheim-Gilboa Project is located and from north of the line east and west of Albany (Tr. Vol. 2A at 382) will be 2,500 Mw if there is no Leeds Line and 4,250 Mw when there is a Gilboa-Leeds Line (Tr. Vol. 2A at 392).

That testimony was given in 1971 and assumed that the various lines south of Leeds not yet completed or reinforced would be ready by 1974 with or without the Leeds Line. The testimony related to what would be the situation in 1974 based on those assumptions. There have of course been delays.

*There is a single circuit 345 kv line from Fraser to Coopers Corners.

As stated above, construction of the section of the connection from Coopers Corners to Rock Tavern is still indefinite. The circuit from Rock Tavern to Ramapo is in operation.

The total capacity of transmission facilities between Leeds and Pleasant Valley can be increased with relative expedition once approval of design and location of the Leeds Line is granted because in addition to Niagara Mohawk's two 345 kv circuits there are on or near the right of way shown on the sketch some 115 kv circuits (part of the way two and part of the way four) which can be replaced by 345 kv circuits. From Pleasant Valley south to Millwood Consolidated Edison has two 345 kv circuits and two 138 kv circuits on the same right of way. It is already replacing the latter two with 345 kv lines. Con Edison intends also to increase the capacity of the two existing 345 kv lines.

While facilities other than the Leeds Line will help account for the dramatic 1,750 Mw increase in "transfer capability", the Leeds Line is a completely essential and most important element in bringing about the larger increase.

"Transfer capability" is a technical term encompassing criteria (or standards) established under Northeast Power Coordinating Council guidelines by the New York Power Pool. The term connotes the maximum amount of power which the rules allow to be carried from a given area to another given area under specifically defined circumstances on particular transmission lines. The purpose of the limitations set by the criteria is to avoid thermal overloading or instability. (Tr. Vol. 2A at 377-395, Vol. 7 at 1088, 1089).

There will usually be a small flow of power on the 345 kv line north from the Roseton Plant to Leeds while the configuration of generation and

transmission facilities assumed in computer studies prevail and all are in working order even after the Leeds Line is completed. However, when either or both of the Roseton Plant's 600 Mw generators or some other generation in the system south of there are out-of-service for any reason power from the Blenheim-Gilboa Project can flow south from Leeds to Roseton and on toward New York City. *

Since the Blenheim-Gilboa Project plant is a hydroelectric plant it can be placed into service almost instantaneously and has an availability factor of about 98% compared to very slow start-up and much lower percentages of availability for other types of generating plants.

With the project primary transmission line to Leeds in service full use of this high plant availability can be utilized since the loss of any one of the three primary transmission lines will not require the reduction of plant output.

Petitioners' brief states in several places that the Authority falsely represented to the Commission that it would use all of the Blenheim-Gilboa power for upstate New York and that only one plant would be built in the Schoharie Valley. Petitioners' statement is deliberately and knowingly false. No such representation was made. Two statements of intention were made in the application for the Blenheim-Gilboa license. Those statements

*Roseton is near Newburgh on the west side of the Hudson.

correctly set forth the Authority's intention and beliefs at the time the application was made and at the time the license was granted. As stated elsewhere herein subsequent events changed the situation.

Petitioners' brief is also wrong in stating that the Commission issued the Blenheim-Gilboa license for the sole purpose of having its output used in upstate New York. (Pet. Br. p.5). The Commission well knew that while it was expected that the main use of the project's output would be upstate, its output would be used in the New York City area as well, especially during the summer.

Petitioners' brief maintains that changes in the New York City electric demands which occurred since the record in the case was closed in 1973 make the Leeds Line no longer necessary. (Pet. Br. p. 47). On February 26, 1976 in applying for rehearing of the Commission's January 29, 1976 order affirming the Judge's Initial Decision and approving the license for the Leeds Line they asked that the proceeding be reopened on this ground and also on the ground that the State Public Service Commission was carrying out some health and safety studies regarding 765 kv transmission.

The electric load in New York City has gone down since 1973 during the summer of which the city was on the verge of serious power outages on several occasions as indicated in Mr. Poston's testimony quoted above. The reduction in projected load growth has continued to a large extent since 1973.

The cause was of course the recession and the Arab oil embargo which has caused the cost of fuel used in fossil fuel generating plants to

rise spectacularly. The resulting high cost of electricity of course causes less use of electricity and less use of electricity has a lot to do with the recession. The fact that power rates are extremely high in the New York metropolitan area is often alleged to be the cause of industry leaving the state. *

Unless disaster comes to the area demand for electricity is bound to rise. Business, particularly manufacturing business, would not have to improve very much before there is a startling increase in demand. Reduction in the cost of electricity would also bring about an increase in demand.

In any case the chief consequence of the events of the past three years is that the total loads projected for this and the next succeeding three years will not come until about three or four years later than expected. The drop in electric demand in New York while it temporarily lessens the danger of disastrous outages is no reason why the Leeds Line should not be constructed and constructed as soon as possible.

Another change in the southeastern New York power situation has also come about since 1973. This is the Authority's purchase from Con Edison of two large incomplete power plants, one fueled by oil and the other by nuclear means. The Authority is thus in the business of selling power directly to customers, other than electric utility companies, in the New York area for the first time. Sales from the 965 mw

* The rates are either the highest in the nation or nearly the highest.

Indian Point No. 3 nuclear plant in Westchester County, which is almost complete, started within the last two months. The 800 Mw Astoria No. 6 oil fired fuel plant in Queens is almost complete and sales from it are expected to commence soon. Contracts have already been made with New York City, the Metropolitan Transportation Authority and many other public entities in New York City and Westchester for the sale of power from both plants. The cost of power from these plants, while lower than that produced by private utilities in the area, will be very high due to fuel costs.

Fuel costs for some of the various types of thermal generating plants in the Metropolitan New York area are as follows:

	Mills per Kwh
Nuclear (Indian Point No. 3)	4.5
Base Load Oil (Astoria No. 6)	22
Gas Turbines (Con Edison)	33

The average fuel cost for Con Edison is about 20 mills. However, during weekday peak load hours the incremental fuel cost is usually substantially greater than the average since less efficient units such as gas turbines are required to meet the electric demand in the area.

About 25% of Con Edison's total capacity referred to in Petitioners' brief (p. 49), is gas turbine capacity. A substantial part of the balance constitutes old and inefficient generating units several of which are scheduled for retirement as early as 1978.

When water flows are high at the Niagara and St. Lawrence Projects the Authority has excess energy to sell. Excess energy is sold at the very low price of 3.47 mills per Kwh. It has recently been sending some of this energy to New York City to the extent that the energy and necessary

transmission facilities are available and supplying it to its Indian Point-Astoria customers when the Indian Point No. 3 Plant has been out-of-service for maintenance with the result that the fuel adjustment element of their bills will be reduced. For example, in September 1976 the Authority purchased supporting energy from Con Edison at an average cost of 23 mills per Kwh. The cost during peak load hours was as much as 33 mills per Kwh. Beginning in October hydro energy was furnished to the Authority's customers at a total cost of only 5 mills in lieu of purchases from Con Edison providing a substantial savings to the Authority's customers.

Much of such hydro energy is available only at night and other off-peak periods such as weekends. It will be advantageous for the Authority to send some of this off-peak energy to the Blenheim-Gilboa plant and use it for pumping water into the upper reservoir. It can then produce electricity and use it in the New York area when it is most needed during daytime peaks. The Authority estimates that it can bring power to the Blenheim-Gilboa plant and pump it into the reservoir and later convert it into power and transport it to the New York area for a total delivered cost of under 8 mills. Substituting it for much higher cost power and energy from its Astoria No. 6 Plant or avoiding the purchase of high-cost supporting energy when either plant is unavailable will be a great saving to Authority's customers.

The process by which all this is done will be greatly assisted if the Leeds Line is available. Energy will be brought from Niagara to Utica

on Authority lines, thence to Albany on Niagara Mohawk lines, thence to Gilboa on the Authority's New Scotland line, thence to Leeds on the Leeds Line and thence to New York by whatever lines are available. The advantage of this arrangement over the present situation is that there will be a direct line from Gilboa to Leeds and thus the New Scotland to Leeds two 345 Kv circuit line bottleneck will be eliminated.

The Leeds Line will be of further value as a method of getting pumping power to the Blenheim-Gilboa pumped storage plant from Authority plants and other plants south of Albany.

Another change of conditions which has come about since 1973 is that the hearings on the Authority's 765 Kv line from Utica to Quebec are virtually complete and the New York Public Service Commission has authorized construction. Thus, at least 800 Mw of firm Canadian power will be carried through Albany and Leeds toward the New York area as well as considerable non-firm power. It is anticipated that some of the latter will be used for pumping at Blenheim-Gilboa. The Leeds Line will be valuable in transmitting the power produced by that plant.

The Leeds Line was properly licensed and is valuable for many purposes.

Petitioners' February 27, 1976 application to reopen the case based on the ground that the Public Service Commission is studying health and safety features 765 Kv transmission is without merit.

The Commission has not licensed the Leeds Line as a 765 Kv line. It has merely licensed it as a single circuit 345 Kv line with structures capable of carrying another 345 Kv circuit. The line is also to be capable of conversion to 765 Kv. However, a brand new application to the Commission would be necessary before an additional circuit could be added or a 765 Kv conversion could take place.

Commission Determination as to Route

The property owners constituting the Tri-County Transmission Line Association who are the de facto parties to this review proceeding object to the choice of Route B-1 as the location of the line. Petitioners brief alleges that the record does not support the selection of B-1 or any other route for the line. This is patently wrong.

As stated above in-depth consideration was given in the proceeding to five aboveground locations known as Routes A, B, C and D with various alternatives to some parts of some of them, particularly two alternatives designated Route A-1 and Route B-1. In-depth consideration was also given to at least two alternate locations for possible underground lines selected by Authority and one location designated by the Commission staff. Testimony was given with respect to other routes to which reference was made by petitioners in the course of the proceedings before the ALJ including one from the power plant to New Scotland to Leeds which would be twice as long as a direct route to Leeds and one which would for some distance follow a gas pipeline which proceeds in a direction other than to Leeds. (Tr. 3806). These all were shown to be completely impractical. Testimony was also given as to some other conceivable but virtually impossible routes one of which would be more than 200 miles long. *

* Alternative overhead and underground routes were described and discussed in the FES (R. 4565-4917) and were described in the Commission "Notice of Alternative Routes ***" published by the Commission May 18, 1973. (R. 6686-6700). The notice contained detailed descriptions of fifteen alternative routes.

Routes C, D and E were shown to be unsatisfactory for various reasons. (R. 7063, App. 18). Route C was shown to be environmentally, engineeringly, and cost-wise impractical because of its much greater length. Route D was impractical because it would run along Catskill Creek for at least twenty miles and cross it ten times and for other reasons. Route E to the south would have been skylined on the side of a mountain ridge which can be seen from at least three states, would have impinged on the Forest Preserve and would have been terrifically difficult and expensive to build.

From the outset Authority made clear that while it preferred Route A-1, either that route or Route B-1 was environmentally and otherwise acceptable.

A great deal of testimony was presented by the Town of Durham and other intervenors based in the Town of Durham with respect to the relative environmental impacts of Routes A-1 and B-1 in an effort to show that Route A-1 would have caused more environmental damage than Route B-1.

The Director of Planning of the Greene County Planning Board who had a great deal to do with laying out Route B-1 testified that if a choice was to be made between Routes A-1 and B-1, Route B-1 should be chosen for the line. (Tr. 3911-12, 3957). He stated that the official position of Greene County favored Route C which would be north of both Routes A-1 and B-1 and would put much more of the line in Albany County and much less in Greene County. (Tr. 3923) Route B-1 as chosen reflects modifications made from the original Route B-1 at the behest of the Commission Staff and others.

Testimony by experts including Dr. Eric Gross, a top professor in the field of power transmission at Rensselaer Polytechnic Institute (Tr. 396-425) and E. Barrett Shew, retired Chief Electrical Engineer in charge of the Electrical Engineering Division of the Philadelphia Electric Company (Tr. 426-464) demonstrated unequivocally that the use of underground conductors equivalent to a 345 kv single circuit overhead line on a route between the power plant and Leeds would be undesirable and impractical from environmental, cost and reliability standpoints.

Evidence was presented with respect to the impracticality and environmental disadvantage of lines to the north of the 12-mile wide corridor in which A, B, D, D and E were laid out and with respect to the area south of the 12-mile corridor. In the latter area the line would intrude on the Forest Preserve.

Neither petitioners nor any other intervenors submitted any evidence in support of any line or any in opposition to any line except Route A-1, although their only witness Blackburn said there were some difficulties with Route B-1. (Tr. 3956)

Petitioners' brief in this Court complains that the Authority failed to consider "regional", "programmatic" and "modal" alternatives to a transmission line between the power plant and Leeds. It does not suggest any regional, programmatic or modal alternative and does not say what is meant by the terms "programmatic" and "modal". Presumably what was meant was that instead of Authority's transporting project power to the interconnected primary transmission grid at

Leeds by a roughly direct route and thence to southeastern New York on power lines included in the grid it would manage to get the power where it is needed by some completely new and exotic method or by some new contrivance.

While this review proceeding is brought about by land owners who were not parties in the Federal Power Commission proceedings, the Town of Greenville was a party to the proceeding and was represented by the attorneys who represented Greene County. The one witness called on behalf of those two intervenors in the proceeding stated that Route B-1 should be chosen rather than Route A-1 in the case of an election between the two. (Tr. 3957). Even in the brief submitted to this Court petitioners' counsel says that the ALJ and the Commission were correct in rejecting Route A-1. (Pet. Br. 24, 29). There is really no serious issue in this case involving the determination by the ALJ and the Commission that the line should be located along Route B-1.

The Commission Prepared An Adequate
Environmental Impact Statement and Other -
wise Satisfied the Requirements of NEPA in
Authorizing Construction of the Gilboa-Leeds
Line

Petitioners contend that the Commission authorized construction of the Gilboa-Leeds Line in violation of NEPA. Specifically, Petitioners assert that the Environmental Impact Statement was inadequate, that the Commission not only failed to consider "modal or programmatic alternatives", but otherwise failed to engage in a comprehensive evaluation of the Gilboa-Leeds Line and other projects. Petitioners contend that the Commission's Environmental Impact Statement should have considered the impact of the proposed Breakabeen Project, various possible generating plants in the Hudson River Valley, a 765 kv transmission line between Utica and Massena to import hydroelectric power from Canada which has been authorized by the State Public Service Commission, a possible 765 kv transmission line between Utica and Gilboa and new transmission facilities between Leeds and Pleasant Valley. In short, the petitioners would require the Commission to engage in extensive regulation and planning over all aspects of electric generation and transmission in New York State.

To evaluate the validity of these claims, it is essential to recognize the extent and limitations on Federal Power Commission jurisdiction under the Federal Power Act and NEPA. The opinion of the Supreme Court in United States v. SCRAP 412 U.S. 669 (1973) (SCRAP I), points out that

NEPA does not repeal by implication any other statute. Indeed, the plain language of section 105 of NEPA states that the policies and goals set forth in NEPA are "supplementary to those set forth in existing authorizations of Federal agencies". 42 USC § 4335.

Therefore, the Commission's responsibilities under NEPA must be determined in the context of its jurisdiction under the Federal Power Act. It is clear that under the Power Act the Commission's authority is limited to the licensing of hydro-electric project works which include "primary lines" that transmit power from the licensed hydro-electric project generating plant to a point or points of junction with the interconnected primary transmission system. 16 USC §796 (11). When the Commission exercises its licensing jurisdiction over the construction of a primary line such as the Gilboa-Leeds Line it must comply with the policies and procedures embodied in NEPA. Under NEPA the Commission must take into account the environmental impacts necessarily associated with or resulting from the construction, operation and maintenance of the Gilboa-Leeds Line. However, the Commission is not authorized to assert jurisdiction and assess under NEPA other generating transmission facilities that are not a part of the Leeds Line and not otherwise subject to its authority as defined in the Power Act. Compare Henry v. FPC, 573 F. 2d 395 (D.C. Cir. (1975), with Kitchen v. FCC, 464 F. 2d 801 (D.C. cir. 1972).

When considered in the context of the foregoing legal framework, the invalidity of petitioners' NEPA claims becomes apparent.

Indeed, petitioners raised the same arguments before this Court in Greene County Planning Board v. Federal Power Commission (Greene County III), 528 F. 2d 38 (1975). In that case Greene County challenged the issuance of the Presidential Permit authorizing the construction and connection of a 765 kv transmission facility at the international border. Greene County asserted that the

"international connection was part of a 'completely integrated plan' - a plan which included Blenheim-Gilboa and Breakabeen hydroelectric projects (Commission Project Nos. 2685 & 2729) as well as other generating and transmission facilities in and about Greene County - and that this wider plan ultimately will harm the environment of Greene County. The Planning Board sought a consolidated consideration of the instant proceedings with the proceedings involved the Blenheim-Gilboa and Breakabeen projects. The contentions of the Plannin Board are based on the view that the ultrahigh voltage transmission facilities here under consideration will make vast amounts of Canadian hydroelectric power available at the New York state border and that power will necessarily be transmitted eventually through Greene County." 528 F. 2d at 41.

In rejecting the petitioners' challenge to the Presidential Permit, this Court correctly perceived the limitations on Federal Power Commission jurisdiction arising under Part I of the Federal Power Act. This Court recognized that the 765 kv line authorized by the Presidential Permit is not a "primary line" subject to license under Part I of the Federal Power Act. This court also stated that the Commission's comprehensive planning function under Section 10(a) of the Power Act arises only in connection with projects over which it has licensing jurisdiction and thus would not apply to the 765 kv line. Finally, this Court properly declined the petitioners'

invitation to expand the Commission's authority beyond that conferred by Congress:

"However much we might agree with the petitioner that there may be great need for a single regulatory body having planning responsibility over various aspects of electric generation and transmission, the FPC does not have such responsibility in this situation, see FPC v. Louisiana Power & Light Co. 406 U.S. 621, 635-36, (1972), for it is clear that these facilities are not subject to Commission regulations under the provisions of Part I of the Act. The argument advanced by petitioner is one for Congress, not the courts." 528 F. 2d at 45. (emphasis added)

Here, petitioners again request this Court to expand the Commission's jurisdiction under the Power Act and NEPA, a contention previously rejected in Greene County III.

Based upon the foregoing it becomes quite evident that, contrary to petitioners' claim, the Commission prepared an adequate EIS herein and otherwise fully complied with the requirements of NEPA and properly authorized construction of the Blenheim-Gilboa Leeds Line.

The discussion of alternatives in the EIS is more than adequate.

As this Court stated in NRDC v. Callaway, 424 F. 2d 79 (2d Cir. 1975)

"The content and scope of discussion of alternatives to the proposed action depend on the nature of the proposal. ... Although there is no need to consider alternatives which could only be implemented after significant changes in governmental policies or legislation or which require similar alterations of existing restrictions, the EIS must nevertheless consider such alternatives to the proposed action as may partially or completely meet the proposals goal and it must evaluate their comparative merits." 524 F. 2d at 93. .

Perusal of the Commission's EIS demonstrates that the discussion of alternatives contained therein fully satisfies this Court's mandate in NRDC v. Callaway, supra, and indeed serves as the substantial "linchpin" for the remainder of the EIS. Monroe County Conservation Association v. Volpe, 472 F. 2d at 697-98. The EIS at pages 39-109 discusses (1) ten alternate overhead transmission line routes, (2) undergrounding as an alternative, (3) direct current transmission alternatives, (4) postponement of construction of the Gilboa-Leeds circuit, (5) prohibition of construction of the Gilboa-Leeds circuit, (6) generating capacity alternatives to the circuit, and (7) a storage battery plant as an alternative to the circuit. Given the nature of the proposal under consideration, i.e., the authorization of construction of a primary line as a project work of the constructed Blenheim-Gilboa Project No. 2685, the content and scope of the EIS alternative discussion clearly satisfies NEPA.

Similarly, petitioners' claim that the scope of the EIS was too limited because of a failure to consider other generating and transmission facilities subject to the jurisdiction of other federal and non-federal agencies is groundless. Petitioners fail to recognize that an EIS is required only in connection with proposals for major federal actions. Nothing in NEPA would require a federal agency to prepare an EIS in connection with non-federal proposals. See Aberdeen & Rockfish, R.R. v. SCRAP (SCRAP II), 422 U.S. 298 (1975).

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This Court ~~recently~~ reversed its prior decisions in the highway cases under NEPA in light of Scrap II's holding on this point. Conservation Society of Southern Vermont, Inc. v. Secretary of Transportation (Conservation Society II) 531 F. 2d 637 (2d cir. 1976).

In Conservation Society of Southern Vermont, Inc. v. Secretary of Transportation (Conservation Society I), 508 F. 2d 927 (2d. Cir. 1975), this Court had affirmed the holding of the District Court of Vermont (362 F. Supp. 627 (1973)) that Greene County I required that an environmental impact statement be prepared for a 280 mile corridor through three states even though the federal action being taken by the Federal Highway Administration related only to a twenty-mile stretch between Bennington and Manchester in Vermont.

In October 1975 the Supreme Court granted a writ of certiorari to the Solicitor General, vacated the judgment in Conservation Society I and remanded the case to this court for further consideration in light of SCRAP II. 423 U.S. 809, 46 L. Ed. 29 (1975).

On remand this Court held that since there was "no overall federal plan" for improving the 280-mile corridor into a superhighway and the federal action being taken related only to a twenty-mile stretch of highway, under SCRAP II there was no obligation for an impact statement considering the entire corridor. Conservation Society II, 531 F. 2d 637, 641-42 (2d Cir. 1976).

Kleppe v. Sierra Club, ____ US ____, 8 ERC 2169 (June 28, 1976), reaffirms the principle ~~that~~ a federal agency need not evaluate private developments on a regional basis where the agency itself has not proposed major federal action on a regional or programmatical scale of the scope advanced by petitioners.

In sum, the holdings of Conservation Society II, SCRAP II, and Kleppe v. Sierra Club clearly refute petitioners' contention that the EIS prepared by the Commission should discuss all possible future transmission and generating facilities in New York prior to any action on the 35.4 mile Gilboa-Leeds Line. The mere relationship between all proposed electric projects in the region of interest does not require the FPC to prepare one comprehensive EIS covering all projects, federal and non-federal, before proceeding to approve specific pending applications. Kleppe v. Sierra Club, 8 ERC at 2178. As the Supreme Court stated in Kleppe:

"Nor is it necessary that petitioners always complete a comprehensive impact statement on all proposed actions in an appropriate region before approving any of the projects. As petitioners have emphasized, and respondents have not disputed, approval of one lease or mining plan does not commit the Secretary to approval of any others; nor, apparently do single approvals by the other petitioners commit them to subsequent approvals. Thus, an agency could approve one pending project that is fully covered by an impact statement, then take into consideration the environmental affects of that existing project when preparing the comprehensive statement on the cumulative impact of the remaining proposals." 8 ERC at 2178, n. 26.

It should be noted that the Federal Power Commission is in the process of preparing an impact statement on the proposed Breakabeen Project No. 2685 and its alternatives including the Prattsville project. The Nuclear Regulatory Commission will prepare an environmental impact statement for the Authority's proposed Greene County Nuclear Power Plant. There is no federal agency with jurisdiction over the 765 kv transmission line and hence no requirement for environmental impact statement under NEPA in connection with that proposal. Clearly, under Kleppe v. Sierra Club the FPC is authorized to approve the Gilboa-Leeds Line so long as that line is fully covered by an impact statement. The Commission has the duty to consider any cumulative environmental impacts in preparing subsequent environmental impact statements on other projects, such as Breakabeen or Prattsville, which are subject to its licensing jurisdiction. As Kleppe points out an agency has considerable discretion in determining the manner in which it will comply with the mandate of NEPA in this regard. 8 ERC at 2177-2178.

Petitioners also contend that the draft impact statement was deficient. (Pet. Br. at 16, 52). In making this claim petitioners ignore the substantial authority establishing that deficiencies in a draft impact statement are of no consequence provided that the final impact statements meets the mandate of NEPA. For example, CEQ guidelines specifically provide that "an agency may at any time supplement or amend a draft environmental statement." 40 CFR §1500.1(b). Indeed, this Court sanctioned the use of supplemental data and statements to bolster an otherwise deficient environmental statement in NRDC v. Callaway, 524 F 2d 79 (2d. Cir. 1975):

"We agree with the district court that the use of supplemental data and statements is permissible to bolster an otherwise deficient EIS or to amend an EIS to consider changes in the proposed federal action when the "supplemental" adequately remedies the deficiency or analyzes the impact of the proposed change and is properly circulated among the appropriate agencies before a final decision has been reached. We implicitly approved this practice in 1-291 Why? Association v. Burns, supra, slip. op. at 3861, although the supplemental statements there had not been adequately circulated to comply with NEPA. The necessity and economy of such a method of amending and supplementing EIS's in light of proposal changes or EIS deficiencies without redrafting or recirculating a whole new document is obvious." 524 F. 2d at 91-92.

In the instant case it is clear that the FPC complied with the foregoing requirements. Deficiencies, if any, were corrected through the comment process and an adequate final environmental statement was prepared and introduced into evidence as Exhibit 71 and was cross-examined prior to any final agency action on the Authority's application.

Petitioners argue that there has been no independent FPC analysis. In particular they challenge the Commission's reliance upon data supplied by Authority and the electric industry. Again, petitioners' claim is without merit. In Sierra Club v. Lynn, 502 F. 2d 43 (5th Cir. 1974), cert. denied, 421 U.S. 994 (1975), the Court said:

"Neither is... the impact statement fatally undermined by the direct participation of the developer and his experts in the underlying environmental and other studies. There is no NEPA prohibition against the state agency, financially interested private contractor or community applicant providing the federal agency, which must of necessity work closely with these parties, data, information, reports, groundwork environmental studies, or other assistance in the preparation of an environmental impact statement." 502 F. 2d at 59.

Furthermore in East 63rd Street Association v. Coleman, 9 ERC 1192 (S.D.N.Y. 1976), the Court stated:

"... while an agency should avoid accepting without question the self-serving statements or assumptions of local agencies, it by no means follows that federal agencies may not utilize work done by state or local authorities as long as the federal officials exercise their own independent judgment." 9 ERC at 1201.

Thus petitioners argument that the Commission must gather and evaluate data, assumptions and studies independent of the Authority and electric industry data and efforts is frivolous.

Petitioners also ~~attack~~ the alleged narrowness in scope of the Environmental Impact ~~Statement~~. (Pet. Br. at 52). In particular, they allege a failure to address the environmental impact of generating facilities and other ~~transmission~~ lines, including the "special environmental impact" connected with 765 kv transmission. These allegations are based upon a misconception of ~~the~~ Commission's role under Section 10(a) of the Power Act and under NEPA.

In authorizing ~~the~~ construction of the Gilboa-Leeds Line as part of the Blenheim-Gilboa ~~Project~~ No. 2685, the Commission made its judgment that the line as designed and as located will satisfy the requirements of Section 10(a) so that Project No. 2685 will be best adapted to a comprehensive plan of development for the waterway. In carrying out this Section 10(a) duty ~~the~~ Commission was also required to comply with the procedures of Section 102 of NEPA and implement the policies of Section 101 of NEPA. Thus it assessed the functions, impacts and relationship of the Gilboa-Leeds Line in the context of other existing and proposed generating and transmission facilities. It did so in order to determine whether ~~the~~ Gilboa-Leeds Line was best adapted under Section 10(a) and in order to insure appropriate mitigation of adverse environmental impacts ~~of~~ the line's construction in accordance with the policies of Section 101 ~~of~~ NEPA.

These responsibilities under NEPA and Section 10(a) are reflected and demonstrated by ~~the~~ Commission's action in requiring the line to be

designed so that the single right-of-way could be utilized to meet transmission requirements of the area for the foreseeable future.

This was accomplished by requiring that the line be designed to be convertible for use by two 345 kv circuits and ultimately for use as a single circuit 765 kv line. In performing this function under Section 10 (a) and under NEPA with respect to the Gilboa-Leeds Line, the Commission is not required to assess the environmental impact of other existing or proposed generating and transmission facilities as petitioners are asking this Court to order the Commission to do. Kleppe v. Sierra Club, ____ U. S. ____, 8 ERC 2169, 2177-78 (1976).

Erroneous and Misleading Statements

Petitioners' brief contains numerous statements which are either false or are misleading. Many are accompanied by citations to the voluminous testimony at the hearing and by quotations from that testimony and other parts of the record. Many of the citations have no relevance to the proposition or statement for which they are offered and many of the quotations are either incomplete or taken entirely out of context.

In the short time available for preparing this brief we are unable to point out most of the incorrect or misleading statements.

However, we do wish to comment on approximately four pages of the brief.

On pages 16-19 of Petitionerers' brief an attack is made on the quality of the draft environmental statement and to some extent on the final statement submitted by the Commission's Staff. Much is made of three or four letters written by the Environmental Protection Agency and one letter written by the New York State Department of Environmental Conservation.

On March 16, 1973 the Environmental Protection Agency wrote a letter to the Federal Power Commission discussing the draft environmental statement. It said that its "primary comment deals not with the project directly nor with its environmental impact, but rather with the scope of

review that should have been undertaken". It said that the draft should have evaluated not only the Gilboa-Leeds Line but also the Blenheim-Gilboa Project proper, the lines to Fraser and New Scotland and the proposed Breakabeen Project which was described in the draft statement. EPA recommended that an environmental impact statement be prepared covering all such facilities even though the Blenheim-Gilboa facilities other than the Leeds line were already completed or nearly so.

The letter stated that the draft statement recognized the potential adverse effects of the transmission line in such ways as disruption and siltation of streams but should have described specific measures undertaken to eliminate the adverse effects.

On the top of the letter were written the words "class (3)". Enclosed with it was a form which purported to classify environmental statements. Class 3 was the worst class set forth.

Some of the language of the form explaining class 3 form is quoted on page 17 of Petitioner's brief.

EPA said it considered the projects to which the draft referred all one general enterprise and said that all would have to be considered in determining whether the Leeds line should be of a 345 Kv or 765 Kv variety.

The General Counsel of the Power Authority protested to EPA about its communication to the Commission. As a result, on May 4, 1973 EPA wrote to the General Counsel of the Authority and stated it would give further consideration to the draft Environmental Impact Statement if requested to do so by the Federal Power Commission. The letter said that

EPA was concerned about the combined operation of the two pumped storage plants and the water resources of the area and wished to have its concerns answered in the Final Environmental Impact Statement.

The letter further said that EPA understood that a draft statement will be issued for the proposed Breakabeen plant and that in its opinion the questions raised in the Leeds line statement could adequately be responded to in that document. It said that a commitment by the Commission to include such decisions in the Breakabeen draft could satisfy any concerns EPA raised on the Leeds line draft.

After the May 4 letter was sent Petitioners' counsel got in touch with the EPA and on May 29, 1973 EPA wrote another letter to the Commission in which it referred to the fact that the Authority in a May 14, 1973 answer to 'Intervenors' Notice of Appeal on Project No. 2685, Blenheim-Gilboa," adverted to EPA's May 4 letter and indicated that the Authority construed it to be a withdrawal of its March 16 comments on the draft statement.

The May 29 EPA letter said its May 4 comments had not been withdrawn and remained for consideration to the Commission. However, the May 29 letter said:

"The intent of our May 4 letter to PASNY was to explain the concerns which prompted us to call for a reissued draft statement. We further indicated that these concerns could adequately be considered in a subsequent draft statement on the proposed Breakabeen facility. To be adequate, however, responses to our concerns must be timely enough to forestall the potential environmental effects that we pointed out in our May 4 letter."

Petitioners' brief on page 19 adverts to both the May 4 and May 29 letters for the purpose of seeking to demonstrate that the EPA March 16 comments had not been withdrawn. It complains that the May 29 letter which it calls the final EPA letter was not included. (It was not written until after the FES was published). It quotes the paragraph of the May 29 letter which states that the May 4 letter was not withdrawn but omits the paragraph quoted above. The brief does not advert to a fourth letter written by EPA. It was dated June 22, 1973 and was addressed to the Commission.

The June 22 letter restated what was said in the May 4 letter to the Authority and the fact that the EPA had considered that the Breakabeen Project, the Blenheim-Gilboa Project and the Leeds Line could probably have been considered in one Environmental Impact Statement.

It went on to say:

"... This was because our review of the draft statement indicated that the need for the line was based on the anticipated completion of the proposed Breakabeen pumped storage facility. The discussion on pages 101 through 106 of the final EIS states that it is the FPC's opinion that the line is needed to properly support the operation of the present Blenheim-Gilboa pumped storage facility. We have no reason to question the FPC's judgment or expertise in this area. Therefore, we no longer suggest as necessary one comprehensive impact statement on the pumped storage facilities and associated transmission lines.

"Our concerns regarding the construction of the Gilboa-Leeds transmission line have been answered to our satisfaction. The following points form the basis for this conclusion:

1. the ~~final~~ statement on page 251 contains PASNY's commitment to contract specifications which will, if ~~implemented~~, minimize the environmental damage to the right of way during installation of the ~~transmission~~ line and towers. Final approval of ~~the~~ route by the FPC should be contingent upon adherence to these specifications and those further measures that will be specified once a final route is selected;
2. the ~~statement~~ makes it clear that the line can be constructed initially in a manner that will require only the addition of a second 345 Kv circuit should the Breakabeen facility become a reality. Construction of the line in this manner will minimize further environmental disturbance should the need arise for conversion to a double circuit.

"Our second major concern, that of the cumulative effects of the operation of the two pumped storage facilities on the water resources of the area remains unanswered. We feel that this issue is the more important of the two and must be adequately analyzed before the Breakabeen project can proceed. As we said in our May 4 letter, the cumulative effects of the two facilities can properly be assessed in the upcoming draft statement for the Breakabeen project. An environmental impact statement which does not discuss the cumulative impact of the two facilities will, in our opinion, be seriously deficient."

The June 22 letter was not included in the Final Environmental Statement for the same reason that the May 29 letter was not included. Petitioners' brief on page 17 on the basis of language in the EPA class 3 form which it quoted and ignoring the final communication from EPA to the Commission stated:

"Accordingly, EPA, which is mandated by Section 309 of the Clean Air Act (42 USC §1857h-7) to comment on all NEPA statements, found that it could not rate or comment upon the proposed project."

The brief went on to say that the State Department of Environmental Conservation (DEC) also concluded that the draft could not be commented upon. The brief quoted a March 13, 1973 letter from someone in DEC to the State Public Service Commission (not to the Federal Power Commission).

In a footnote Petitioners' brief says EPA and DEC comments are set forth "in an annex to this brief following p. 65". Actually what the brief has following p. 65 are the EPA March 16 and May 29 letters along with the March 13, 1973 DEC letter which was addressed to the PSC but does not contain the name of the sender. The brief does not contain all the EPA comments because it leaves out those in the second and fourth letters -- May 4 and June 22, 1973.

The DEC letter came about as follows: The Governor of New York designated the PSC to answer all requests made to the State for comments relating to federally-licensed power transmission facilities. Under the State system an agency so designated notifies all other agencies which might have an interest. The PSC so notified DEC with respect to the Leeds Line and the letter under discussion was sent in response to those requests.

The Public Service Commission took all the comments it received from State agencies including DEC on the draft statement and prepared a letter to the FPC based on the various comments. The letter was dated March 14, 1973 and is included in the Final Environmental Statement.

Petitioners complained that the PSC letter to the Federal Power Commission did not contain as much of DEC's comments as it should.

Petitioners' counsel obtained a copy of the DEC letter to the PSC from DEC. The Power Authority was unable to obtain a copy despite requests to the PSC. The PSC finally made the letter available to all parties to the Leeds Line proceeding because Petitioners had one and were basing arguments about the alleged insufficiency of the draft statement on it. The DEC letters were finally placed in evidence in the Leeds Line proceeding by counsel for the Town of Durham as an item by reference on May 14, 1973 after the FEIS had been prepared. The DEC letters were highly critical of the draft statement.

The brief goes on to disparage the Final Impact Statement prepared by the Commission's Staff and quotes it at length.

The main thrust of Petitioners' attacks on the draft statement and the final statement was based on the EPA and DEC letters. They failed to mention the fourth letter in their brief.

They adversely criticized the Federal Power Commission staff for failing to publish the DEC letter in the FES. This is of course very unfair because the DEC letter was not addressed to the Federal Power Commission but rather was an internal New York State working document.

Petitioners' brief on p. 19 ends up its derogatory statements about the draft and final statements by accusing the Commission of attempting to "hide" the DEC and EPA comments. Attached hereto as Exhibit A are the four EPA letters. The DEC letter is also attached as Exhibit B.

In a footnote on page 20 of their brief petitioners complained that Authority's Environmental Report, Exhibit 33 (R. 4269), "was admitted into evidence on a sudden whim of Judge Levy" citing transcript page 2256 and claimed further that the Report escaped cross-examination. This is erroneous. The facts are that the Report was admitted into evidence to facilitate cross-examination on the Report by petitioners' counsel and he actually cross-examined on the Report. (Tr. 2318-2320). Thus Judge Levy's statement (Tr. 2131) that Authority's Environmental Report was subjected to cross-examination is true and petitioners' claim is false. (Pet. Br., p. 12). The Report was identified in the record and assigned Exhibit No. 33 on the third hearing day (Tr. 680). All of Authority's witnesses were available for cross-examination on the report. For example, staff counsel asked Authority's witness Shew questions about the Report (Tr. 680-683).

Petitioners contend at page 21 of their 30-page statement of "facts" that Authority's "presentation was purely and simply an engineer's day" whatever that means. The brief states that the drafting of the final version of Authority's Environmental Report was done by a lawyer and an engineer. That is correct. However, petitioners' brief fails to advise the Court that the testimony shows that the main duties of the engineer

referred to were environmental in character. (Tr. 1551). The record also shows that many people worked on the design and location of the Leeds Line, including Herbert S. Conover and Frank Brown, environmentalists in Uhl, Hall & Rich's Environmental Engineering Section, with whom Authority's witness Fullerton collaborated in planning and designing the line. (Tr. 206). Witness Fullerton's assignment was to establish an optimum route from environmental, engineering and economic standpoints. (Tr. 207).

All these people contributed impact to the environmental report.

Many more examples of unfair characterization of record could be given.

PSC retained Washington counsel to present its position before the ALJ. The PSC's objection was that requiring employees to appear and testify would disrupt the agencies' operations by taking the employees away from their assigned tasks. (Tr. 2155, 3526).

The PSC also objected to the employees testifying as to the position of that Commission on various matters including some on which it had not reached any conclusion.

Among the persons petitioners wanted subpoenaed were the PSC employees, Burgraff and Samuel Tilaro,* and a DEC employee named Thomas King.

The PSC's Washington Counsel, stated in regard to the proposed scope of Burgraff's and Tilaro's testimony.

"As I understand Mr. Needleman's letter requesting the subpoenas, and from his prior statements with respect to Mr. King, he intends to use Mr. Burgraff and Mr. Tilaro to put on a direct case. He intends to use them not for what they may have seen or know as a fact, but for their expertise, their opinions as expert witnesses.

These witnesses will not and cannot be compelled to prepare for such testimony... If they are subpoenaed,... the sole testimony they will give would be with respect to facts of which they may have personal knowledge." (Tr.2156).

Witness Burgraff was at not time authorized by the PSC to speak on behalf of that agency nor was he authorized to collaterally attack the comments and conclusions concerning the DES furnished by the PSC to the Federal

* Mr. Tilaro, an engineer whose title was Principal Systems Engineer in the Energy Division, had had real expertise on the subject of transmission lines and in addition was personally familiar with the area through which the Gilboa-Leeds Line was proposed to be built. However, when it came time for the hearings in Albany Counsel for the Public Service Commission announced that he had been told by Petitioners' Counsel by day before that they had changed their minds and did not want Mr. Tilaro's testimony. (Tr.3517). The witness King testified but is not mentioned in petitioners' brief.

Power Commission. (Tr. 2160, 2165, 3544). Public Service Commission Counsel stated unequivocally with respect to Burgraff's testimony

"The witness is not qualified to speak for for Department."
(Tr. 3573).

The Federal Power Commission staff, partly in response to what it considered a suggestion in this direction by the Court of Appeals in Greene County I, arranged with the PSC and DEC to make available for testimony in Albany the three State employees requested by Greene County.

The ALJ agreed to issue subpoenas for the two PSC employees and the DEC employee subject to conditions set by him under which they were to be examined. He correctly directed that they be examined only to the extent of their personal knowledge of the factual issues in this proceeding.
(Tr. 2165).

He specifically limited the questioning of the witnesses to

"their personal investigation, their own studies, surveys in connection with the position that they held." (Tr. 2160)

He accordingly refused to authorize the taking of testimony of Public Service Commission and Department of Environmental Conservation witnesses for the purpose of impeaching the comments submitted to the FPC by the Public Service Commission on behalf of the State. (Tr. 2165, 3550).

The Federal Power Commission in Opinion No. 751 (R. 7316) specifically approved of the ALJ's disposition of this matter.

The petitioner's brief (pp. 25-26) completely misstates what the Judge said and obviously meant with respect to Burgraff's status as a witness who was appearing pursuant to subpoena.

Contrary to allegations in the brief (Pet. Br. pp. 25-26) the Judge

properly stated that Burgraff's biography was not inserted in the record for the purpose of qualifying him as an expert witness for petitioners.

The Judge stated:

"All I'm saying is the curriculum vitae is not for the purpose of qualifying the witness, but is merely informational." (Tr. 3528-G).

The petitioner's brief states that Mr. Burgraff was Greene County's principal witness and called him the only "expert on the environmental aspects of transmission line planning" called by any party (Pet. Br. at 25).

Neither statement is true.

Mr. Burgraff was subpoenaed as a witness by the ALJ and appeared with counsel from the Public Service Commission who stated:

"MR. RHEINGOLD: Mr. Burgraff... is here at Your Honor's direction. Your Honor has set forth on the record the terms under which Mr. Burgraff may be questioned" (Tr. 3526).

Contrary to the representation made in petitioner's brief (p. 25) the PSC attorney never offered Mr. Burgraff as an expert witness who could testify as to his opinion on any matter. In fact Mr. Rheingold made numerous objections, which were upheld, to questions posed by petitioner's counsel which sought to elicit opinion testimony from Mr. Burgraff. (Tr. 3543, 3558, 3564, 3563, 3567, 3574, 3574).

The Authority's counsel also made a number of objections to the questions asked of Mr. Burgraff by petitioner and consistent with the

ALJ's earlier rulings on the scope of the permissible questioning of the witness some of these objections were also sustained. (Tr. 3550, 3560, 3562, 3568, 3572).

As indicated above, earlier in the hearings a great deal of time and thousands of words were consumed in attempted collateral attacks by some intervenors on comments submitted to the Federal Power Commission on the DEIS by the PSC on behalf of itself and other State agencies including DEC. (Tr. 725-732, 2150-2142).

Among the series of questions which petitioner's counsel asked Mr. Burgraff were some having to do with the attempted collateral attack which had been previously made in the hearings on the conduct of the Chairmen of the Authority and the Public Service Commission and other State officials. The ALJ sustained objections to such line of questioning and said:

"...Greene County is not entitled to compel New York State to produce an expert witness to give testimony for the purpose of impeaching or in any way attacking or questioning the statement of [of] position of the State of New York. The State of New York is not a party to this proceedings. Its invited comments are part of this record. In response to a request from the Federal Power Commission under the Act, the Greene County decision, and under the Rules of the Commission, and any further questions relating to the background of New York State's statement of position, how it was prepared, et cetera, et cetera, obviously go to a collateral questioning of a statement. That statement speaks for itself" (Tr. 3544-45).

Despite the Judge's instructions placed on the record before Mr. Burgraff was subpoenaed as to what he could be questioned about if the subpoena were issued, petitioner's counsel asked him to express his opinion on the need for

a transmission line from Gilboa to Leeds at 345 kv or higher. Upon objection the ALJ said:

"PRESIDING JUDGE: I sustain the objection. That's the issue we have to determine here.

"Mr. Needleman: Right, and this witness has testified on it. I've asked this witness --

"PRESIDING JUDGE: I said I will not permit you to use this witness, who was compelled to appear here, as your expert to give opinion testimony on the ultimate issues in this proceedings. That is my ruling." (Tr. 3550).

The witness was asked questions on environmental matters. He answered them at length and without objection. (Tr. 3539-3543).

He was also asked a series of questions completely out of his field of expertise, but the ALJ allowed him to answer over objections by the Authority. Those questions had to do with systems planning and the engineering features of the transmission lines. After answering many questions, Mr. Burgraff finally volunteered that he wasn't qualified and the ALJ sustained an objection.* (Tr. 3569).

The record of the proceeding while Mr. Burgraff was on the stand, which covers 56 pages of the transcript is a good example of petitioners counsel's absolute refusal to abide by the rulings of the Judge and their penchant to keep on arguing after rulings were made and to repeat questions to which objections had earlier been sustained.

* Mr. Burgraff testified that matters concerning engineering and electrical evaluation of transmission lines within the jurisdiction of the Public Service Commission were determined by the System Planners Branch of the Power Division of the office of Environmental Planning. (Tr. 3531) No person from this Branch or any other department with engineering or system planning expertise was called to testify.

Petitioner's brief statement that the Judge

"effectively excluded Greene County's direct case (footnote omitted) on comparative environmental impact and deprived the Record of the best evidence on this critical point" (p. 26)

by sustaining some objections to the testimony of Burgraff is completely and absolutely untrue. *

Petitioners' counsel thought the Burgraff testimony protested that Authority counsel had no right to object to Petitioner's questions addressed to Mr. Burgraff and that only the PSC counsel could do so. (Tr 3560).

This demonstrates the posture of the Burgraff episode.

Another example of Petitioners complaining bitterly in their brief about alleged derelictions of the ALJ appear on page 23 and 24 of their brief. The witness Joseph J. Jessel who for many years was a top electrical engineer in the Federal Power Commission had testified that he understood that the Commission Staff had prepared an engineering report at an early stage in the consideration of the Blenheim-Gilboa application recommending that the three transmission lines be considered primary lines and be included in the license. Petitioners complain in their brief that they asked the ALJ to direct that the report be turned over to them and that the ALJ did not take a sufficiently firm posture to require it. (Pet. Br. 23-24).

*Petitioners' submitted no prepared testimony of Mr. Burgraff. If they were calling him as their principal witness and if this testimony was to constitute their "direct case" as their counsel stated, they were required to submit this proposed testimony in advance by the orders of the Judge and the Commission. They did not do so.

Actually the record indicates that there was a dispute among the parties about who would have the obligation to go to the Public Docket Room of the Commission and look for any papers which Petitioner wanted, including the Staff report. It certainly was not a matter of consequence and not any basis whatever for an attack on the Judge.

The brief fails to state that the Staff finally found the report and Staff Counsel on December 13, 1973 sent copies of it to the ALJ and all parties during the briefing period.

There are many other similar examples in the record akin to the two set forth in this section.

CONCLUSION

For the reasons stated above, this Court should affirm the Commission's order issued January 29, 1976 affirming and adopting the initial decision authorizing construction of the proposed Gilboa-Leeds

transmission line and the Commission's order issued April 27, 1976 denying rehearing on the January 29, 1976 order.

Respectfully submitted,

Scott B. Lilly

Attorney for Intervenor
Power Authority of the State
of New York
10 Columbus Circle
New York, New York 10019

October 18, 1976

OF COUNSEL:

Thomas F. Moore, Jr.
John C. Mason
Vincent J. Tobin
Arthur J. Kalita

ENVIRONMENTAL PROTECTION AGENCY
Regional Office II
Federal Building
26 Federal Plaza
New York, New York 10007

EXHIBIT A

MAR 16 1973

Class. (3)

Mr. Kenneth F. Plumb
Secretary
Federal Power Commission
Washington, D.C. 20426

Dear Mr. Plumb:

This office has reviewed the draft environmental impact statement (EIS) for the proposed Gilboa-Leeds transmission line issued by the Federal Power Commission. Our primary comment on this project deals not with the project directly nor with its environmental impact, but rather with the scope of review that should have been undertaken. The guidelines of the Council on Environmental Quality dated April 23, 1971 and other interpretations of the National Environmental Policy Act (NEPA) have held that the review of federal agency actions affecting the environment should not be done with a segmented approach. Agency actions should be analyzed as to their cumulative effects. We have consistently criticized the piecemeal approach when taken by other federal agencies. For example, the preparation of several EIS's for various segments of a highway defeats the purpose of NEPA. While individual segments may be innocuous, the total, cumulative effects may be undesirable or at least deserving of detailed analysis.

The subject project, the Gilboa-Leeds transmission line, is one constituent of a major power supply project. The initial component, the Blenheim-Gilboa Pumped Storage Plant, was not the subject of any EIS since its construction was begun before NEPA even existed. However, those subsequent projects associated with the line and the existing pumped storage facility should be evaluated as a whole. Specifically these are the (1) Blenheim-Gilboa project, (2) the Gilboa-New Scotland, Gilboa-Fraser, and the Gilboa-Leeds transmission lines, and (3) the proposed Breakabeen pumped storage facility and associated transmission lines. These facilities comprise a subsystem to a much larger network and taken as a whole have the potential of significantly impacting the area in which they are being constructed.

The final configuration of the Gilboa-Leeds transmission line depends on whether the capacity will be 345 Kv or 765 Kv (page 115). 765 Kv capacity will be required if the proposed Breakabeen facility becomes a reality. This depends in large part on the project being acceptable from an environmental impact standpoint. Due to these and other interrelationships, we recommend that the three projects mentioned be the subject of a single environmental statement reissued in draft form for review.

Concerning the substance of the EIS presented, we have the following additional comments. The statement recognizes the potential adverse effects of the transmission line. Among these effects are disruntion and siltation of streams, a substantial number of which are crossed by all the proposed routing alternative. The statement should describe the specific measures that will be taken to minimize or eliminate these adverse effects and delineate how these measures will be enforced.

Thank you for the opportunity to comment.

Sincerely yours,

Paul H. Arbesman
Chief
Environmental Impact
Statement Branch



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

MAY 4 1977

Mr. Scott B. Lilly
General Counsel
Power Authority of the State
of New York
10 Columbus Circle
New York, New York 10019

Dear Mr. Lilly:

We have not received any correspondence from the Federal Power Commission (FPC) concerning the comments we sent them on their draft environmental impact statement (EIS) for the Gilboa-Leeds Transmission Line. This office will give further consideration to the draft EIS if requested to do so by the FPC.

The comments that we made on the draft EIS for the Gilboa-Leeds Transmission Line represent our concern over the cumulative impact on the environment of several separate but related projects. In particular, although we called for the inclusion of the three associated transmission lines and the Breakabeen pumped storage facility in the EIS, our concern was with two areas. These are: 1) the effect of the combined operation of both pumped storage facilities on water resources of the area, e.g. stream depletion if reservoir water for both facilities is obtained from common stream sources, and 2) the effect of doubling the capacity of the Gilboa-Leeds Transmission Line in terms of the impact of further construction activities on stream beds should the Breakabeen plant become a reality. These questions should have been clearly answered in the draft EIS. *(over?)*

We now understand that a draft EIS will be issued for the proposed Breakabeen plant. In our opinion, the questions we raised above can be adequately responded to in that document. A commitment by the FPC to include such discussions in the draft EIS for Breakabeen could satisfy any concerns that we raised on the draft for the Gilboa-Leeds Transmission Line.

Sincerely yours,

Gerald M. Hansler, P.E.
Regional Administrator

ENVIRONMENTAL PROTECTION AGENCY
Regional Office II
Federal Building.
26 Federal Plaza
New York, New York 10007

MAY 29 1973

Mr. Kenneth F. Plumb
Secretary
Federal Power Commission
Washington, D.C. 20426

Dear Mr. Plumb:

We are in receipt of a May 14, 1973 Answer to Intervenor's Notice of Appeal on Project No. 2685, Blenheim-Gilboa, by the Power Authority of the State of New York (PASNY). In that answer, reference is made to our May 4, 1973 letter to PASNY (copy attached) which expanded upon our comments previously made to the Federal Power Commission on the draft environmental impact statement for the Blenheim-Gilboa Project No. 2685.

On page 6 of the above mentioned answer, counsel for PASNY has misconstrued our May 4 letter to be a withdrawal of our March 16 comments on the draft statement. Our comments on that statement have not been withdrawn and remain for the consideration of the Federal Power Commission.

The intent of our May 4 letter to PASNY was to explain the concerns which prompted us to call for a reissued draft statement. We further indicated that these concerns could adequately be considered in a subsequent draft statement on the proposed Breakabeen facility. To be adequate, however, responses to our concerns must be timely enough to forestall the potential environmental effects that we pointed out in our May 4 letter. *timely!*

Sincerely yours,

Gerald W. Hansler, P.E.
Regional Administrator

Enclosure

cc: Scott B. Lilly
Neil E. Needleman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

26 FEDERAL PLAZA

NEW YORK, NEW YORK 10007

JUN 22 1973

Mr. Kenneth F. Plumb
Secretary
Federal Power Commission
Washington, D.C. 20426

Dear Mr. Plumb:

We have reviewed the final environmental impact statement for the Blenheim-Gilboa Project No. 2685 - Gilboa-Leeds Transmission Line Route. In our comments on the draft statement and subsequent correspondence, we raised several issues concerning the cumulative effect of several projects, all being parts of a single system. Our primary concerns, as stated in our May 4, 1973, letter to Mr. Scott B. Lilly of the Power Authority of the State of New York (PASNY), were: (1) the effect of the combined operation of both the Blenheim-Gilboa and Breakabeen pumped storage facilities on the water resources of the area, and (2) the effect of subsequent doubling of the capacity of the Gilboa-Leeds Transmission Line. We suggested that these could properly have been the subject of a single environmental impact statement. This was because our review of the draft statement indicated that the need for the line was based on the anticipated completion of the proposed Breakabeen pumped storage facility. The discussion on pages 101 through 106 of the final EIS states that it is the FPC's opinion that the line is needed to properly support the operation of the present Blenheim-Gilboa pumped storage facility. We have no reason to question the FPC's judgement or expertise in this area. Therefore, we no longer suggest as necessary, one comprehensive impact statement on the pumped storage facilities and associated transmission lines.

Our concerns regarding the construction of the Gilboa-Leeds transmission line have been answered to our satisfaction. The following points form the basis for this conclusion:

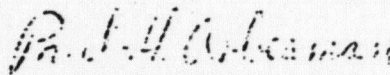
1. the final statement on page 251 contains PASNY's commitment to contract specifications which will, if implemented, minimize the environmental damage to the right of way during installation of the transmission line and towers. Final approval of the route by the FPC should be contingent upon adherence to these specifications and those further measures that will be specified once a final route is selected;

2. the statement makes it clear that the line can be constructed initially in a manner that will require only the addition of a second 345 Kv circuit should the Breakabeen facility become a reality. Construction of the line in this manner will minimize further environmental disturbance should the need arise for conversion to a double circuit.

Our second major concern, that of the cumulative effects of the operation of the two pumped storage facilities on the water resources of the area, remains unanswered. We feel that this issue is the more important of the two and must be adequately analyzed before the Breakabeen project can proceed. As we said in our May 4 letter, the cumulative effects of the two facilities can properly be assessed in the upcoming draft statement for the Breakabeen project. An environmental impact statement which does not discuss the cumulative impact of the two facilities will, in our opinion, be seriously deficient.

Thank you for the opportunity to review this final statement.

Sincerely yours,



Paul H. Arbesman

Chief

Environmental Impact
Statement Branch

cc: ✓ Scott Lilly



RONALD W. PEDERSEN
FIRST DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ALBANY

March 13, 1973

Dear Dennis:

The Department of Environmental Conservation has completed its review of the Federal Power Commission's draft environmental statement for the "Blenheim-Gilboa Project No. 2605 - New York, Gilboa Leeds Transmission Line Route", issued in January, 1973. In completing our review, we have taken into consideration comments of all appropriate Department divisions and those of our regional units. While it is our usual custom to provide specific and detailed comments, we feel at this time that the subject statement is so entirely deficient, that such reply would be comparable to entirely rewriting the Federal Power Commission's document. However, the following illustrate some of our more general concerns:

1. Transmission corridor alternatives are discussed only superficially and dismissed; major emphasis is devoted to the proposed PASNY Route.
2. Visual impact is discounted by pointing out the adaptability of man and his accommodation to the intrusion in time; totally ignoring the scenic values to be protected in the Durham Valley.
3. Recreational uses of the corridor are discussed in depth; however, a proposed right-of-way without fee simple title creates doubts regarding PASNY's authorization for proposed recreational uses, such references are misleading.
4. Erosion control measures are not discussed; erosion and the resulting siltation of protected streams are significant adverse impacts.
5. General references to possible adverse impacts on fish, wildlife and forest environments are inadequate for environmental analysis; an in depth discussion should be presented.

Generally, the document is an inadequate attempt to answer some of the questions which were raised in the Public Service Commission's letter of June 28, 1971 on the environmental report prepared by the Power Authority. The Federal Power Commission's answers and

responses, for the most part, are defensive and often quite negative.

The statement in most of its content seems to reflect the Power Authority's original environmental report with the minor addition of some selected factual and statistical information. Furthermore, it appears to be hastily compiled; the FPC order for this draft was November 6, 1972 and the statement was completed on or about January 15, 1973. It is difficult to believe and understand how a comprehensive document covering in detail all alternatives and the associated environmental impacts, could be completed in such a short time period.

The document, dealing only with one 35-mile segment of a transmission network may be academic. The minimum environmental impact study and analysis should be one which viewed the generating facility and the substation, and the transmission lines as a single system.

The Gilboa-Leeds transmission line is a first step, and will be basic to a comprehensive regional power plan, therefore, consideration of this one statement alone and by itself is an injustice to the basic letter and spirit of intent of the National Environmental Policy Act of 1969 and the Greene County Planning Board versus F.P.C. court decision. Any analysis of this one line is superficial without consideration of the environmental impact of the long range power production of the northeast.

We urge you to convey our position on the draft environmental statement to the Federal Power Commission. Furthermore, we suggest that the State of New York be consulted by the F.P.C. for guidance in preparing an appropriate and proper environmental statement for the action under consideration.

Thank you for your consideration of this Department's position.

Sincerely,

Mr. Dennis Rapp
Director, Office of
Environmental Planning
Public Service Commission
44 Holland Avenue
Albany, New York

WNC:ng
cc: Messrs. Curran, Elliot
T. King, RWP File

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GREENE COUNTY PLANNING BOARD, et al.,

Petitioners,

vs.

FEDERAL POWER COMMISSION,

Respondent,

and

POWER AUTHORITY OF THE STATE
OF NEW YORK

Intervenor,

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL UNION 1249,

Applicant for
Intervention.

Nos. 76-4151

Nos. 76-4153

: AFFIDAVIT OF SERVICE

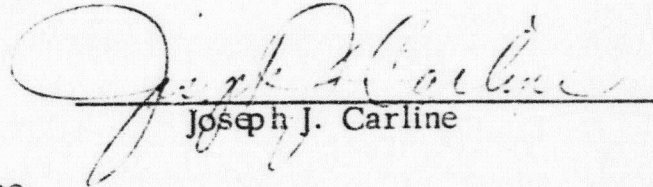
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOSEPH J. CARLINE, being duly sworn, deposes and says:

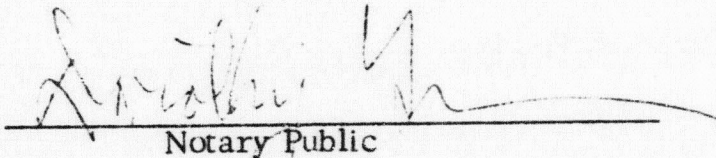
1. Deponent is not a party to the action, is over 18 years of age
and resides at 540 East 20th Street, New York, New York.

2. On October 18, 1976 deponent served the within Briefs of
Intervenor on attorneys for all the parties to this proceeding by depositing

a true copy of said in a postpaid properly addressed wrapper in an official
depository under the exclusive care and custody of the United States Postal
Service within the State of New York.


Joseph J. Carline

Subscribed and sworn to before me
this 18th day of October, 1976.


Notary Public

DOROTHY GUNN
Notary Public, State of New York
No. 41-4598252
Qualified in Queens County
Commission Expires March 30, 1978